

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Amendment)

5 907 KAR 3:090. Acquired brain injury waiver services.

6 RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R.
7 441.300 - 310, 42 C.F.R. 455.100 - 106, 42 U.S.C. 1396a, b, d, n

8 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1),
9 205.520(3)

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services, has responsibility to administer the Medi-
12 caid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
13 comply with any requirement that may be imposed, or opportunity presented, by federal
14 law to qualify for federal Medicaid funds~~[the provision of medical assistance to Ken-~~
15 ~~tucky's indigent citizenry]~~. KRS 205.5606(1) requires the cabinet to promulgate adminis-
16 trative regulations to establish a participant~~[consumer]~~-directed services program to
17 provide an option for the home and community-based services waivers. This adminis-
18 trative regulation establishes the coverage provisions relating to home- and community-
19 based waiver services provided to an individual with an acquired brain injury as an al-
20 ternative to nursing facility services and including a participant~~[consumer]~~-directed ser-
21 vices program pursuant to KRS 205.5606.

1 Section 1. Definitions. (1) "1915(c) home and community based services waiver pro-
2 gram" means a Kentucky Medicaid program established pursuant to and in accordance
3 with 42 U.S.C. 1396n(c).

4 (2) "ABI" means an acquired brain injury.

5 (3)[(2)] "ABI provider" means an entity that meets the criteria established in Section 2
6 of this administrative regulation.

7 [(3) "ABI recipient" means an individual who meets the criteria established in Section
8 3 of this administrative regulation.]

9 (4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch
10 of the Department for Medicaid Services, Division of Community Alternatives.

11 (5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and
12 community based waiver service provided to a Medicaid eligible individual who has ac-
13 quired a brain injury.

14 (6) "Advanced practice registered nurse" is defined by KRS 314.1011(7).

15 (7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities,
16 needs, and services that [is]:

17 (a) Serves as the basis [~~Completed on a MAP 351;~~

18 ~~(b) Submitted to the department;~~

19 ~~4.]~~ for a level of care determination;

20 (b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into
21 the MWMA portal; and

22 (c) Occurs at least once [~~2. No less than~~] every twelve (12) months thereafter.

23 (8)[(7)] "Behavior intervention committee" or "BIC" means a group of individuals es-

1 established to evaluate the technical adequacy of a proposed behavior intervention for an
2 ABI recipient.

3 ~~(9)[(8)]~~ "Blended services" means a nonduplicative combination of ABI waiver ser-
4 vices identified in Section 4 of this administrative regulation and participant di-
5 rected[CDO] services identified in Section 10[8] of this administrative regulation provid-
6 ed pursuant to a recipient's approved person-centered service plan ~~[of care]~~.

7 ~~(10)[(9)]~~ "Board certified behavior analyst" means an independent practitioner who is
8 certified by the Behavior Analyst Certification Board, Inc.

9 ~~(11)[(10)]~~ "Budget allowance" is defined by KRS 205.5605(1).

10 ~~(12)[(11)]~~ "Case manager" means an individual who manages the overall develop-
11 ment and monitoring of a recipient's person-centered service plan ~~[of care]~~.

12 ~~(13) ["Consumer" is defined by KRS 205.5605(2).~~

13 ~~(14) "Consumer directed option" or "CDO" means an option established by KRS~~
14 ~~205.5606 within the home and community based services waiver that allows recipients~~
15 ~~to:~~

16 ~~(a) Assist with the design of their programs;~~

17 ~~(b) Choose their providers of services; and~~

18 ~~(c) Direct the delivery of services to meet their needs.~~

19 ~~(15)]~~ "Covered services and supports" is defined by KRS 205.5605(3).

20 ~~(14)[(16)]~~ "Crisis prevention and response plan" means a plan developed by the per-
21 son centered team ~~[an interdisciplinary team]~~ to identify any potential risk to a recipient
22 and to detail a strategy to minimize the risk.

23 ~~(15)[(17)]~~ "DCBS" means the Department for Community Based Services.

1 (16)[(18)] "Department" means the Department for Medicaid Services or its design-
2 ee.

3 (17)[(19)] "Good cause" means a circumstance beyond the control of an individual
4 that affects the individual's ability to access funding or services, including:

5 (a) Illness or hospitalization of the individual which is expected to last sixty (60) days
6 or less;

7 (b) Death or incapacitation of the primary caregiver;

8 (c) Required paperwork and documentation for processing in accordance with Sec-
9 tion 3 of this administrative regulation that has not been completed but is expected to
10 be completed in two (2) weeks or less; or

11 (d) The individual or his or her legal representative has made diligent contact with a
12 potential provider to secure placement or access services but has not been accepted
13 within the sixty (60) day time period.

14 (18)[(20)] "Human rights committee" or "HRC" means a group of individuals estab-
15 lished to protect the rights and welfare of an ABI recipient.

16 ~~(19)[(21)] "Interdisciplinary team" means a group of individuals that assist in the de-~~
17 ~~velopment and implementation of an ABI recipient's plan of care consisting of:~~

18 ~~(a) The ABI recipient and legal representative if appointed;~~

19 ~~(b) A chosen ABI service provider;~~

20 ~~(c) A case manager; and~~

21 ~~(d) Others as designated by the ABI recipient.~~

22 (22)] "Level of care certification" means verification, by the department, of ABI pro-
23 gram eligibility for:

1 (a) An individual; and

2 (b) A specific period of time.

3 ~~(20)~~~~(23)~~ "Licensed marriage and family therapist" or "LMFT" is defined by KRS
4 335.300(2).

5 (21) "Licensed medical professional" means:

6 (a) A physician;

7 (b) An advanced practice registered nurse;

8 (c) A physician assistant;

9 (d) A registered nurse;

10 (e) A licensed practical nurse; or

11 (f) A pharmacist.

12 ~~(22)~~~~(24)~~ "Licensed professional clinical counselor" is defined by KRS 335.500(3).

13 ~~(23)~~~~(25)~~ "Medically necessary" or "medical necessity" means that a covered benefit
14 is determined to be needed in accordance with 907 KAR 3:130.

15 (24) "MWMA portal" means the Kentucky Medicaid Waiver Management Application
16 internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.

17 ~~(25)~~~~(26)~~ "Occupational therapist" is defined by KRS 319A.010(3).

18 ~~(26)~~~~(27)~~ "Occupational therapy assistant" is defined by KRS 319A.010(4).

19 (27) "Participant directed services" or "PDS" means an option established by KRS
20 205.5606 within the 1915(c) home and community based service waiver programs
21 which allows recipients to receive non-medical services in which the individual:

22 (a) Assists with the design of the program;

23 (b) Chooses the providers of services; and

1 (c) Directs the delivery of services to meet their needs.

2 (28) "Patient liability" means the financial amount, determined by the department,
3 that an individual is required to contribute towards cost of care in order to maintain Med-
4 icaid eligibility.

5 (29) "Person-centered service plan" means a written individualized plan of services
6 for a participant that meets the requirements established in Section 4 of this administra-
7 tive regulation.

8 (30) "Person centered team" means a participant, the participant's guardian or repre-
9 sentative, and other individuals who are natural or paid supports and who:

10 (a) Recognize that evidenced based decisions are determined within the basic
11 frame-work of what is important for the participant and within the context of what is im-
12 portant to the participant based on informed choice;

13 (b) Work together to identify what roles they will assume to assist the participant in
14 becoming as independent as possible in meeting the participant's needs; and

15 (c) Include providers who receive payment for services who shall:

16 1. Be active contributing members of the person centered team meetings;

17 2. Base their input upon evidence-based information; and

18 3. Not request reimbursement for person-centered team meetings.

19 (31)[(29)] "Personal services agency" is defined by KRS 216.710(8).

20 (32)[(30)] "Psychologist" is defined by KRS 319.010(9).

21 (33)[(31)] "Psychologist with autonomous functioning" means an individual who is li-
22 censed in accordance with KRS 319.056.

23 (34)[(32)] "Qualified mental health professional" is defined by KRS 202A.011(12).

1 (35)[(33)] "Representative" is defined by KRS 205.5605(6).

2 (36)[(34)] "Speech-language pathologist" is defined by KRS 334A.020(3).

3 (37)[(35)] "Support broker" means an individual designated by the department to:

4 (a) Provide training, technical assistance, and support to a participant~~[consumer]~~;

5 and

6 (b) Assist a participant~~[consumer]~~ in any other aspects of PDS~~[CDO]~~.

7 (38)[(36)] "Support spending plan" means a plan for a participant~~[consumer]~~ that
8 identifies the:

9 (a) PDS ~~[CDO services]~~ requested;

10 (b) Employee name;

11 (c) Hourly wage;

12 (d) Hours per month;

13 (e) Monthly pay;

14 (f) Taxes; and

15 (g) Budget allowance.

16 (39)[(37)] "Transition plan" means a plan that is developed by the person centered
17 ~~[an interdisciplinary]~~ team to aid an ABI recipient in exiting from the ABI program into
18 the community.

19 Section 2. Non-PDS ~~[CDO]~~ Provider Participation Requirements. (1) In order to pro-
20 vide an ABI waiver service in accordance with Section 4 of this administrative regula-
21 tion, excluding a participant-directed~~[consumer-directed option]~~ service, an ABI provider
22 shall:

23 (a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

1 (b) Be certified by the department prior to the initiation of the service;

2 (c) Be recertified at least annually by the department;

3 (d) Have an office within the Commonwealth of Kentucky; and

4 (e) Complete and submit a MAP-4100a to the department.

5 (2) An ABI provider shall comply with:

6 (a) 907 KAR 1:671;

7 (b) 907 KAR 1:672;

8 (c) [(b)] 907 KAR 1:673; [and]

9 (d) 907 KAR 7:005;

10 (e) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and
11 45 C.F.R. Parts 160, 162, and 164; and

12 (f) 42 U.S.C. 1320d to 1320d-8

13 [(e) 902 KAR 20:078].

14 (3) An ABI provider shall have a governing body that shall be:

15 (a) A legally-constituted entity within the Commonwealth of Kentucky; and

16 (b) Responsible for the overall operation of the organization including establishing
17 policy that complies with this administrative regulation concerning the operation of the
18 agency and the health, safety and welfare of an ABI recipient served by the agency.

19 (4) An ABI provider shall:

20 (a) Unless providing PDS~~[participating in the CDO program]~~, ensure that an ABI
21 waiver service is not provided to a participant ~~[an ABI recipient]~~ by a staff member of
22 the ABI provider who has one (1) of the following blood relationships to the participant
23 ~~[an ABI recipient]~~:

- 1 1. Child;
- 2 2. Parent;
- 3 3. Sibling; or
- 4 4. Spouse;

5 (b) Not enroll a participant ~~[an ABI recipient]~~ for whom the ABI provider cannot meet
6 the service needs; and

7 (c) Have and follow written criteria that complies with this administrative regulation for
8 determining the eligibility of an individual for admission to services.

9 ~~(5) [An ABI provider shall comply with the requirements of the Health Insurance~~
10 ~~Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. 1320d to 1320d-8.~~

11 ~~(6)]~~ An ABI provider shall meet the following requirements if responsible for the man-
12 agement of a participant's ~~[an ABI recipient's]~~ funds:

13 (a) Separate accounting shall be maintained for each participant ~~[ABI recipient]~~ or for
14 his or her interest in a common trust or special account;

15 (b) Account balance and records of transactions shall be provided to the participant
16 ~~[ABI recipient]~~ or legal representative on a quarterly basis; and

17 (c) The participant ~~[ABI recipient]~~ or legal representative shall be notified when a
18 large balance is accrued that may affect Medicaid eligibility.

19 ~~(6)]~~ ~~(7)]~~ An ABI provider shall have a written statement of its mission and values.

20 ~~(7)]~~ ~~(8)]~~ An ABI provider shall have written policy and procedures for communication
21 and interaction with a family and legal representative of a participant's ~~[an ABI recipi-~~
22 ~~ent's]~~ which shall:

23 (a) Require a timely response to an inquiry;

1 (b) Require the opportunity for interaction with direct care staff;

2 (c) Require prompt notification of any unusual incident;

3 (d) Permit visitation with the participant ~~[ABI-recipient]~~ at a reasonable time and with
4 due regard for the participant's ~~[ABI-recipient's]~~ right of privacy;

5 (e) Require involvement of the legal representative in decision-making regarding the
6 selection and direction of the service provided; and

7 (f) Consider the cultural, educational, language and socioeconomic characteristics of
8 the participant ~~[ABI-recipient]~~.

9 ~~(8)(a) [(9)]~~ An ABI provider shall have written policies and procedures for all settings
10 that assure the participant has:

11 1. Rights of privacy, dignity, respect, and freedom from coercion and restraint;

12 2. Freedom of choice:

13 a. As defined by the experience of independence, individual initiative, or autonomy in
14 making life choices, both in small everyday matters (what to eat or what to wear), and in
15 large, life-defining matters (where and with whom to live and work); and

16 b. Including the freedom to choose:

17 (i) Services;

18 (ii) Providers;

19 (iii) Settings from among setting options including non-disability specific settings; and

20 (iv) Where to live with as much independence as possible and in the most communi-
21 ty-integrated environment.

22 (b) The setting options and choices shall be:

23 1. Identified and documented in the person-centered service plan; and

1 2. Be based on the participant's needs and preferences.

2 (c) For a residential setting, the resources available for room and board shall be doc-
3 umented in the person-centered service plan.

4 (9) An ABI provider shall have written policies and procedures for residential settings
5 that assure the participant has:

6 (a) Privacy in the sleeping unit and living unit in a residential setting;

7 (b) An option for a private unit in a residential setting;

8 (c) A unit with lockable entrance doors and with only the participant and appropriate
9 staff having keys to those doors;

10 (d) A choice of roommate or housemate;

11 (e) The freedom to furnish or decorate their sleeping or living units within the lease or
12 other agreement;

13 (f) Visitors of the participant's choosing at any time and access to a private area for
14 visitors;

15 (g)1. Physical accessibility, defined as being easy to approach, enter, operate, or
16 participate in a safe manner and with dignity by a person with or without a disability.

17 2. Settings considered to be physically accessible shall also meet the Americans with
18 Disabilities Act standards of accessibility for all participants served in the setting.

19 3. All communal areas shall be accessible to all participants as well as have a means
20 to enter the building (i.e. keys, security codes, etc.).

21 4. Bedrooms shall be accessible to the appropriate persons.

22 5.a. Any modification of an additional residential condition except for the setting be-
23 ing physically accessible requirement shall be supported by a specific assessed need

1 and justified in the participant's person-centered service plan.

2 b. Regarding a modification, the following shall be documented in a participant's per-
3 son-centered service plan:

4 (i) That the modification is the result of an identified specific and individualized as-
5 essed need;

6 (ii) Any positive intervention or support used prior to the modification;

7 (iii) Any less intrusive method of meeting the participant's need that was tried but
8 failed;

9 (iv) A clear description of the condition that is directly proportionate to the specific
10 assessed need;

11 (v) Regular collection and review of data used to measure the ongoing effectiveness
12 of the modification;

13 (vi) Time limits established for periodic reviews to determine if the modification re-
14 mains necessary or should be terminated;

15 (vii) Informed consent by the participant or participant's representative for the modifi-
16 cation; and

17 (viii) An assurance that interventions and supports will cause no harm to the partici-
18 pant [ensure the rights of an ABI recipient by:

19 (a) Making available a description of the rights and the means by which the rights
20 may be exercised, including:

21 1. The right to time, space, and opportunity for personal privacy;

22 2. The right to retain and use personal possessions; and

23 3. For a supervised residential care, personal care, companion or respite provider,

1 ~~the right to communicate, associate and meet privately with a person of the ABI recipi-~~
2 ~~ent's choice, including:~~

3 ~~a. The right to send and receive unopened mail; and~~

4 ~~b. The right to private, accessible use of the telephone;~~

5 ~~(b) Maintaining a grievance and appeals system;~~

6 ~~(c) Complying with the Americans with Disabilities Act (28 C.F.R. Part 35); and~~

7 ~~(d) Prohibiting the use of:~~

8 ~~1. Prone or supine restraint;~~

9 ~~2. Corporal punishment;~~

10 ~~3. Seclusion;~~

11 ~~4. Verbal abuse; or~~

12 ~~5. Any procedure which denies private communication, requisite sleep, shelter, bed-~~
13 ~~ding, food, drink, or use of a bathroom facility.]~~

14 ~~(10) [An ABI provider shall maintain fiscal and service records and incident reports~~
15 ~~for a minimum of six (6) years from the date that a covered service is provided and all~~
16 ~~the records and reports shall be made available to the:~~

17 ~~(a) Department;~~

18 ~~(b) ABI recipient's selected case manager;~~

19 ~~(c) Cabinet for Health and Family Services, Office of Inspector General or its design-~~
20 ~~ee;~~

21 ~~(d) General Accounting Office or its designee;~~

22 ~~(e) Office of the Auditor of Public Accounts or its designee;~~

23 ~~(f) Office of the Attorney General or its designee; or~~

1 ~~(g) Centers for Medicare and Medicaid Services.~~

2 ~~(11)]~~ An ABI provider shall cooperate with monitoring visits from monitoring agents.

3 ~~(11)]~~(12)] An ABI provider shall maintain a record for each participant ~~[ABI-recipient]~~
4 served that shall:

5 (a) Be recorded in permanent ink;

6 (b) Be free from correction fluid;

7 (c) Have a strike through each error which is initialed and dated; and

8 (d) Contain no blank lines between each entry.

9 ~~(12)]~~(13)] A record of each participant ~~[ABI-recipient]~~ who is served shall:

10 (a) Be cumulative;

11 (b) Be readily available;

12 (c) Contain a legend that identifies any symbol or abbreviation used in making a rec-
13 ord entry; and

14 (d) Contain the following specific information:

15 1. The participant's ~~[ABI-recipient's]~~ name and Medical Assistance Identification
16 Number (MAID);

17 2. An assessment summary relevant to the service area;

18 3. The person-centered service plan ~~[MAP-109]~~;

19 4. The crisis prevention and response plan that shall include:

20 a. A list containing emergency contact telephone numbers; and

21 b. The participant's ~~[ABI-recipient's]~~ history of any allergies with appropriate allergy
22 alerts for severe allergies;

23 5. The transition plan that shall include:

- 1 a. Skills to be obtained from the ABI waiver program;
- 2 b. A listing of the on-going formal and informal community services available to be
- 3 accessed; ~~[and]~~
- 4 c. A listing of additional resources needed; and
- 5 d. Expected date of transition from the ABI waiver program;
- 6 6. The training objective for any service which provides skills training to the partici-
- 7 pant ~~[ABI-recipient]~~;
- 8 7. The participant's ~~[ABI-recipient's]~~ medication record, including a copy of the pre-
- 9 scription or the signed physician's order and the medication log if medication is adminis-
- 10 tered at the service site;
- 11 8. Legally-adequate consent for the provision of services or other treatment including
- 12 a consent for emergency attention which shall be located at each service site;
- 13 9. The MAP-350, Long Term Care Facilities and Home and Community Based Pro-
- 14 gram Certification form~~[-MAP-350]~~ updated at recertification; and
- 15 10. Current level of care certification;
- 16 (e) Be maintained by the provider in a manner to ensure the confidentiality of the par-
- 17 ticipant's ~~[ABI-recipient's]~~ record and other personal information and to allow the partici-
- 18 pant ~~[ABI-recipient]~~ or legal representative to determine when to share the information
- 19 as provided by law;
- 20 (f) Be secured against loss, destruction or use by an unauthorized person ensured
- 21 by the provider; and
- 22 (g) Be available to the participant ~~[ABI-recipient]~~ or legal representative ~~[guardian]~~
- 23 according to the provider's written policy and procedures which shall address the avail-

1 ability of the record.

2 ~~(13)~~~~(14)~~ An ABI provider ~~[shall]~~:

3 (a)1. Shall ensure that each new staff person or volunteer performing direct care or a
4 supervisory function has had a tuberculosis (TB) risk assessment performed by a li-
5 censed medical professional and, if indicated, a TB skin test with a negative result with-
6 in the past twelve (12) months as documented on test results received by the provider;

7 2. Maintain, for existing staff, documentation of each staff person's or, if a volunteer
8 performs direct care or a supervisory function, the volunteer's annual TB risk assess-
9 ment or negative tuberculosis test required by subparagraph 1 of this paragraph;

10 3. Ensure that an employee or volunteer who tests positive for TB or has a history of
11 a positive TB skin test shall be assessed annually by a licensed medical professional
12 for signs or symptoms of active disease;

13 4. Before allowing a staff person or volunteer determined to have signs or symptoms
14 of active disease to work, ensure that follow-up testing is administered by a physician
15 with the test results indicating the person does not have active TB disease; and

16 5. Maintain annual documentation for an employee or volunteer with a positive TB
17 test to ensure no active disease symptoms are present;

18 (b)1. Shall for each potential employee or volunteer expected to perform direct care
19 or a supervisory function, obtain;

20 a. Prior to the date of hire or date of service as a volunteer, the results of:

21 ~~(i)~~~~[a-]~~ A criminal record check from the Administrative Office of the Courts or equiva-
22 lent out-of-state agency if the individual resided, worked, or volunteered outside Ken-
23 tucky during the year prior to employment or volunteer service; ~~[and]~~

1 (ii) [b- A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and

2 (iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and

3 b.[2-Obtain,] Within thirty (30) days of the date of hire or date of service as a volun-
4 teer, the results of a Central Registry check as described in 922 KAR 1:470; or

5 2. May use Kentucky's national background check program established by 906 KAR
6 1:190 to satisfy the background check requirements of subparagraph 1 of this para-
7 graph;

8 (c) Shall [and 3-] annually, for twenty-five (25) percent of employees randomly se-
9 lected, obtain the results of a criminal record check from the Kentucky Administrative
10 Office of the Courts or equivalent out-of-state agency if the individual resided or worked
11 outside of Kentucky during the year prior to employment;

12 (d) Shall [and

13 (e)] not employ or permit an individual to serve as a volunteer performing direct care
14 or a supervisory function if the individual has a prior conviction of an offense delineated
15 in KRS 17.165(1) through (3) or prior felony conviction;

16 (e) Shall [(d)] not permit an employee or volunteer to transport an ABI recipient if the
17 employee or volunteer:

18 1. Does not possess a valid operator's license issued pursuant to KRS 186.410; or

19 2. Has a conviction of Driving Under the Influence (DUI) during the past year;

20 (f) Shall [(e)] not employ or permit an individual to serve as a volunteer performing di-
21 rect care or a supervisory function if the individual has a conviction of trafficking, manu-
22 facturing, or possession of an illegal drug during the past five (5) years;

23 (g) Shall [(f)] not employ or permit an individual to serve as a volunteer performing di-

1 rect care or a supervisory function if the individual has a conviction of abuse, neglect or
2 exploitation;

3 (h) Shall [(g)] not employ or permit an individual to serve as a volunteer performing
4 direct care or a supervisory function if the individual has a Cabinet for Health and Fami-
5 ly Services finding of;

6 1. Child abuse or neglect pursuant to the Central Registry; or

7 2. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Regis-
8 try;

9 (i) Shall [(h)] not employ or permit an individual to serve as a volunteer performing di-
10 rect care or a supervisory function if the individual is listed on the;

11 1. Nurse Aide Abuse Registry pursuant to 906 KAR 1:100; or

12 2. Caregiver Misconduct Registry pursuant to 922 KAR 5:120;

13 (j) Shall [(i)] evaluate and document the performance of each employee upon com-
14 pletion of the agency's designated probationary period and at a minimum of annually
15 thereafter; and

16 (k) Shall [(j)] conduct and document periodic and regularly-scheduled supervisory
17 visits of all professional and paraprofessional direct-service staff at the service site in
18 order to ensure that high quality, appropriate services are provided to the participant
19 [ABI-recipient].

20 (14)[(15)] An ABI provider shall:

21 (a) Have an executive director who:

22 1. Is qualified with a bachelor's degree from an accredited institution in administration
23 or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

~~(15)~~~~(16)~~ An ABI provider shall establish written guidelines that address the health, safety and welfare of a participant ~~[an ABI recipient]~~, which shall include:

(a) Ensuring the health, safety and welfare of the participant ~~[ABI recipient]~~;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) For a supervised residential care or adult day training provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the participant ~~[ABI recipient]~~ not exceeding 120 degrees Fahrenheit;

(e) Ensuring that the nutritional needs of the participant ~~[ABI recipient]~~ are met in accordance with the current recommended dietary allowance of the Food and Nutrition

1 Board of the National Research Council or as specified by a physician;

2 (f) Ensuring that staff who supervise medication administration:

3 1. Unless the employee is a licensed or registered nurse, have specific training pro-
4 vided by a licensed medical professional [~~(a nurse, pharmacist, or medical doctor)~~] and
5 documented competency on cause and effect and proper administration and storage of
6 medication; and

7 2. Document all medication administered, including self-administered, over-the-
8 counter drugs, on a medication log, with the date, time, and initials of the person who
9 administered the medication and ensure that the medication shall:

10 a. Be kept in a locked container;

11 b. If a controlled substance, be kept under double lock;

12 c. Be carried in a proper container labeled with medication, dosage, time of admin-
13 istration, and the recipient's name if administered to the participant [ABI-recipient] or
14 self-administered at a program site other than his or her residence; and

15 d. Be documented on a medication administration form and properly disposed of if
16 discontinued; and

17 (g) Establish policies and procedures for on-going monitoring of medication admin-
18 istration as approved by the department.

19 ~~(16)~~[(+7)] An ABI provider shall establish and follow written guidelines for handling an
20 emergency or a disaster which shall:

21 (a) Be readily accessible on site;

22 (b) Include an evacuation drill:

23 1. To be conducted and documented at least quarterly; and

1 2. For a residential setting, scheduled to include a time overnight when a participant
2 [~~an ABI recipient~~] is typically asleep;

3 (c) Mandate that:

- 4 1. The result of an evacuation drill be evaluated and modified as needed; and
5 2. Results of the prior year's evacuation drill be maintained on site.

6 ~~(17)~~~~(18)~~ An ABI provider shall:

7 (a) Provide orientation for each new employee which shall include the mission, goals,
8 organization and policy of the agency;

9 (b) Require documentation of all training which shall include:

- 10 1. The type of training provided;
11 2. The name and title of the trainer;
12 3. The length of the training;
13 4. The date of completion; and
14 5. The signature of the trainee verifying completion;

15 (c) Ensure that each employee complete ABI training consistent with the curriculum
16 that has been approved by the department prior to working independently with a partici-
17 part [~~an ABI recipient~~] which shall include:

- 18 1. Required orientation in brain injury;
19 2. Identifying and reporting abuse, neglect and exploitation;
20 3. Unless the employee is a licensed or registered nurse, first aid, which shall be
21 provided by an individual certified as a trainer by the American Red Cross or other na-
22 tionally-accredited organization; and
23 4. Coronary pulmonary resuscitation which shall be provided by an individual certified

1 as a trainer by the American Red Cross or other nationally-accredited organization;

2 (d) Ensure that each employee completes at least six (6) hours of continuing educa-
3 tion in brain injury annually;

4 (e) Not be required to receive the training specified in paragraph (c)1 of this subsec-
5 tion if the provider is a professional who has, within the prior five (5) years, 2,000 hours
6 of experience in serving a person with a primary diagnosis of a brain injury including:

7 1. An occupational therapist or occupational therapy assistant providing occupational
8 therapy;

9 2. A psychologist or psychologist with autonomous functioning providing psychologi-
10 cal services;

11 3. A speech-language pathologist providing speech-language pathology services
12 ~~[therapy]~~; or

13 4. A board certified behavior analyst; and

14 (f) Ensure that prior to the date of service as a volunteer, an individual receives train-
15 ing which shall include:

16 1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of
17 this subsection;

18 2. Orientation to the agency;

19 3. A confidentiality statement; and

20 4. Individualized instruction on the needs of the participant ~~[ABI-recipient]~~ to whom
21 the volunteer will provide services.

22 ~~(18) [(19)]~~ An ABI provider shall provide information to a case manager necessary for
23 completion of a Mayo-Portland Adaptability Inventory-4 for each participant ~~[ABI-recipient]~~

ent] served by the provider.

(19)[(20)] A case management provider shall meet the requirements established in Section 5 of this administrative regulation[:

~~(a) Establish a human rights committee which shall:~~

~~1. Include an:~~

~~a. Individual with a brain injury or a family member of an individual with a brain injury;~~

~~b. Individual not affiliated with the ABI provider; and~~

~~c. Individual who has knowledge and experience in human rights issues;~~

~~2. Review and approve each of care with human rights restrictions at a minimum of every six (6) months;~~

~~3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that contain human rights restrictions; and~~

~~4. Review the use of a psychotropic medication by an ABI recipient without an Axis-I diagnosis; and~~

~~(b) Establish a behavior intervention committee which shall:~~

~~1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;~~

~~2. Be separate from the human rights committee; and~~

~~3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and~~

~~(c) Complete and submit a Mayo-Portland Adaptability Inventory 4 to the department for each ABI recipient:~~

1 ~~1. Within thirty (30) days of the recipient's admission into the ABI program;~~

2 ~~2. Annually thereafter; and~~

3 ~~3. Upon discharge from the ABI waiver program].~~

4 Section 3. Participant [ABI Recipient] Eligibility, Enrollment and Termination. (1) To
5 be eligible to receive a service in the ABI program:

6 (a) An individual shall:

7 1. Be at least eighteen (18) years of age;

8 2. Have acquired a brain injury of the following nature, to the central nervous system:

9 a. An injury from physical trauma;

10 b. Damage from anoxia or from a hypoxic episode; or

11 c. Damage from an allergic condition, toxic substance, or another acute medical inci-
12 dent; ~~and~~

13 3. Apply to be placed on the ABI waiting list in accordance with Section 9[7] of this
14 administrative regulation; and

15 4. Be screened by the department for the purpose of making a preliminary determi-
16 nation of whether the individual might qualify for ABI waiver services;

17 (b) An individual or the individual's representative shall:

18 1. Apply for 1915(c) home and community based waiver services via the MWMA por-
19 tal; and

20 2. Complete and upload to the MWMA portal a MAP - 115 Application Intake - Partic-
21 ipant Authorization;

22 (c) A case manager or support broker, on behalf of an applicant, shall enter into the
23 MWMA portal ~~[submit]~~ a certification packet ~~[to the department]~~ containing the follow-

ing:

1. A copy of the allocation letter;
 2. A MAP 351, Medicaid Waiver Assessment~~[, MAP 351];~~
 3. A statement for the need for ABI waiver services which shall be signed and dated by a physician on a MAP-10, Waiver Services – Physician's Recommendation;
 4. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification form~~[, MAP 350];~~ and
 5. A person-centered service plan ~~[MAP 109; and~~
 6. ~~The MAP 24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program];~~
- (c) An individual shall receive notification of potential funding allocated for ABI services for the individual;
- (d) An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;
- (e) An individual shall meet the following conditions:
1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;
 2. Be medically stable;
 3. Meet Medicaid eligibility requirements established in 907 KAR 20:010;
 4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and
 5. Have a rating of at least four (4) on the Family Guide to the Rancho Levels of Cognitive Functioning; and

1 (f) An individual shall receive notification of approval from the department.

2 (2) An individual shall not remain in the ABI waiver program for an indefinite period of
3 time.

4 (3) The basis of an eligibility determination for participation in the ABI waiver program
5 shall be:

6 (a) The presenting problem;

7 (b) The person-centered service plan [~~of care~~] goal;

8 (c) The expected benefit of the admission;

9 (d) The expected outcome;

10 (e) The service required; and

11 (f) The cost effectiveness of service delivery as an alternative to nursing facility and
12 nursing facility brain injury services.

13 (4) An ABI waiver service shall not be furnished to an individual if the individual is:

14 (a) An inpatient of a hospital, nursing facility or an intermediate care facility for indi-
15 viduals with an intellectual [~~mental retardation or a developmental~~] disability; or

16 (b) Receiving a service in another 1915(c) home and community based services
17 waiver program.

18 (5) The department shall make:

19 (a) An initial evaluation to determine if an individual meets the nursing facility patient
20 status criteria established in 907 KAR 1:022; and

21 (b) A determination of whether to admit an individual into the ABI waiver program.

22 (6) To maintain eligibility as a participant [~~an ABI recipient~~]:

23 (a) An individual shall maintain Medicaid eligibility requirements established in 907

1 KAR 20:010; and

2 (b) A reevaluation shall be conducted at least once every twelve (12) months to de-
3 termine if the individual continues to meet the patient status criteria for nursing facility
4 services established in 907 KAR 1:022.

5 ~~(7) [An ABI case management provider shall notify the local DCBS office, ABIB, and~~
6 ~~the department via a MAP 24C, Admittance, Discharge or Transfer of an Individual in~~
7 ~~the ABI/SCL Program, if the ABI recipient is:~~

8 ~~(a) Admitted to the ABI waiver program;~~

9 ~~(b) Discharged from the ABI waiver program;~~

10 ~~(c) Temporarily discharged from the ABI waiver program;~~

11 ~~(d) Readmitted from a temporary discharge;~~

12 ~~(e) Admitted to a nursing facility;~~

13 ~~(f) Changing the primary provider; or~~

14 ~~(g) Changing the case management agency.~~

15 ~~(8)]~~ The department may exclude an individual from receiving ABI waiver services if
16 the projected cost of ABI waiver services for the individual is reasonably expected to
17 exceed the cost of nursing facility services for the individual.

18 ~~(8)](9)~~ Involuntary termination or ~~[and]~~ loss of an ABI waiver program placement
19 shall be in accordance with 907 KAR 1:563 and shall be initiated if:

20 (a) 1. An individual fails to initiate an ABI waiver service within sixty (60) days of noti-
21 fication of potential funding without good cause shown.

22 2. The individual or legal representative shall have the burden of providing documen-
23 tation of good cause, including:

1 1. A statement signed by the participant [~~recipient~~] or legal representative;

2 2. Copies of letters to providers; and

3 3. Copies of letters from providers;

4 (b) A participant [~~An ABI recipient~~] or legal representative fails to access the required
5 service as outlined in the person-centered service plan [~~of care~~] for a period greater
6 than sixty (60) consecutive days without good cause shown.

7 1. The participant [~~recipient~~] or legal representative shall have the burden of provid-
8 ing documentation of good cause including:

9 a. A statement signed by the participant [~~recipient~~] or legal representative;

10 b. Copies of letters to providers; and

11 c. Copies of letters from providers; and

12 2. Upon receipt of documentation of good cause, the department shall grant one (1)
13 extension in writing which shall be:

14 a. Sixty (60) days for an individual who does not reside in a facility; and

15 b. For an individual who resides in a facility, the length of the transition plan and con-
16 tingent upon continued active participation in the transition plan;

17 (c) A participant [~~An ABI recipient~~] changes residence outside the Commonwealth of
18 Kentucky;

19 (d) A participant [~~An ABI recipient~~] does not meet the patient status criteria for nurs-
20 ing facility services established in 907 KAR 1:022;

21 (e) A participant [~~An ABI recipient~~] is no longer able to be safely served in the com-
22 munity;

23 (f) The participant [~~ABI recipient~~] has reached maximum rehabilitation potential; or

(g) The participant ~~[ABI-recipient]~~ is no longer actively participating in services within the approved person-centered service plan ~~[of care]~~ as determined by the person-centered team ~~[interdisciplinary team]~~.

~~(9)~~~~(10)~~ Involuntary termination of a service to a participant ~~[an ABI-recipient]~~ by an ABI provider shall require:

(a) Simultaneous notice to the department, the participant ~~[ABI-recipient]~~ or legal representative and the case manager at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The participant's ~~[ABI-recipient's]~~ right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the participant ~~[ABI-recipient]~~ with the name, address and telephone number of each current ABI provider in the state;
2. Provide assistance to the participant ~~[ABI-recipient]~~ in making contact with another ABI provider;
3. Arrange transportation for a requested visit to an ABI provider site;
4. Provide a copy of pertinent information to the participant ~~[ABI-recipient]~~ or legal representative;
5. Ensure the health, safety and welfare of the participant ~~[ABI-recipient]~~ until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

~~(10)~~~~(11)~~ Voluntary termination and loss of an ABI waiver program placement shall be initiated if a participant ~~[an ABI recipient]~~ or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The participant ~~[ABI recipient]~~ or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered service plan team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the

participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the recipient's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

1 (ii) Strengths;
2 (iii) Preferences; and
3 (iv) Ideas;
4 b. Encourages and supports the participant's:
5 (i) Rehabilitative needs;
6 (ii) Habilitative needs; and
7 (iii) Long term satisfaction;
8 c. Is based on reasonable costs given the participant's support needs;
9 d. Includes the participant's:
10 (i) Goals;
11 (ii) Desired outcomes; and
12 (iii) Matters important to the participant;
13 e. Includes a range of supports including funded, community, and natural supports
14 that shall assist the participant in achieving identified goals;
15 f. Includes:-
16 (i) Information necessary to support the participant during times of crisis; and
17 (ii) Risk factors and measures in place to prevent crises from occurring;
18 g. Assists the participant in making informed choices by facilitating knowledge of and
19 access to services and supports;
20 h. Records the alternative home and community-based settings that were considered
21 by the participant;
22 i. Reflects that the setting in which the participant resides was chosen by the recipi-
23 ent;

1 j. Is understandable to the participant and to the individuals who are important in
2 supporting the participant;

3 k. Identifies the individual or entity responsible for monitoring the person-centered
4 service plan;

5 l. Is finalized and agreed to with the informed consent of the participant or recipient's
6 legal representative in writing with signatures by each individual who will be involved in
7 implementing the person-centered service plan;

8 m. Shall be distributed to the individual and other people involved in implementing
9 the person-centered service plan;

10 n. Include those services of which the individual elects to self direct; and

11 o. Prevents the provision of unnecessary or inappropriate services and supports; and

12 (c) Includes in all settings the ability for the participant to:

13 1. Have access to make private phone calls, texts, or emails at the participant's pref-
14 erence or convenience;

15 2.a. Choose when and what to eat;

16 b. Have access to food at any time;

17 c. Choose with whom to eat or whether to eat alone; and

18 d. Choose appropriating clothing according to the:

19 (i) Participant's preference;

20 (ii) Weather; and

21 (iii) Activities to be performed.

22 (3) If a participant's person-centered service plan includes ADHC services, the
23 ADHC services plan of treatment shall be addressed in the person-centered service

1 plan.

2 (4)(a) A participant's person-centered service plan shall be:

3 1. Entered into the MWMA portal by the participant's case manager; and

4 2. Updated in the MWMA portal by the participant's case manager.

5 (b) A participant or participant's authorized representative shall complete and upload
6 into the MWMA portal a MAP - 116 Service Plan – Participant Authorization prior to or
7 at the time the person-centered service plan is uploaded into the MWMA portal.

8 Section 5. Case Management Requirements. (1) A case manager shall:

9 (a)1. Be a registered nurse;

10 2. Be a licensed practical nurse; or

11 3. Be an individual with a bachelor's degree or master's degree in a human services
12 field who meets all applicable requirements of his or her particular field including a de-
13 gree in:

14 a. Psychology;

15 b. Sociology;

16 c. Social work;

17 d. Rehabilitation counseling; or

18 e. Occupational therapy;

19 (b)1. Be independent as defined as not being employed by an agency that is provid-
20 ing ABI waiver services to the participant; or

21 2. Be employed by or work under contract with a free-standing case management
22 agency; and

23 (c) Have completed case management training that is consistent with the curriculum

1 that has been approved by the department prior to providing case management ser-
2 vices.

3 (2) A case manager shall:

4 (a) Communicate in a way that ensures the best interest of the participant;

5 (b) Be able to identify and meet the needs of the participant;

6 (c)1. Be competent in the participant's language either through personal knowledge
7 of the language or through interpretation; and

8 2. Demonstrate a heightened awareness of the unique way in which the participant
9 interacts with the world around the participant;

10 (d) Ensure that:

11 1. The participant is educated in a way that addresses the participant's:

12 a. Need for knowledge of the case management process;

13 b. Personal rights; and

14 c. Risks and responsibilities as well as awareness of available services; and

15 2. All individuals involved in implementing the participant's person-centered service
16 plan are informed of changes in the scope of work related to the person-centered ser-
17 vice plan as applicable;

18 (e) Have a code of ethics to guide the case manager in providing case management
19 which shall address:

20 1. Advocating for standards that promote outcomes of quality;

21 2. Ensuring that no harm is done;

22 3. Respecting the rights of others to make their own decisions;

23 4. Treating others fairly; and

- 1 5. Being faithful and following through on promises and commitments;
- 2 (f) 1. Lead the person-centered service planning team;
- 3 2. Take charge of coordinating services through team meetings with representatives
- 4 of all agencies involved in implementing a participant's person-centered service plan;
- 5 (g) 1. Include the participant's participation or legal representative's participation in
- 6 the case management process; and
- 7 2. Make the participant's preferences and participation in decision making a priority;
- 8 (h) Document:
- 9 1. A participant's interactions and communications with other agencies involved in
- 10 implementing the participant's person-centered service plan; and
- 11 2. Personal observations;
- 12 (i) Advocate for a participant with service providers to ensure that services are deliv-
- 13 ered as established in the participant's person-centered service plan;
- 14 (j) Be accountable to:
- 15 1. A participant to whom the case manager provides case management in ensuring
- 16 that the participant's needs are met;
- 17 2. A participant's person-centered service plan team and provide leadership to the
- 18 team and follow through on commitments made; and
- 19 3. The case manager's employer by following the employer's policies and proce-
- 20 dures;
- 21 (k) Stay current regarding the practice of case management and case management
- 22 research;
- 23 (l) Assess the quality of services, safety of services, and cost effectiveness of ser-

vices being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA portal:

1. A monthly department-approved person centered monitoring tool; and

2. A monthly entry which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note; and

f. The date the note was generated;

(n) Document via an entry into the MWMA portal if a participant is:

1. Admitted to the ABI long term care waiver program;

2. Terminated from the ABI long-term care waiver program;

3. Temporarily discharged from the ABI long term care waiver program;

4. Admitted to a hospital;

5. Admitted to a nursing facility;

6. Changing the primary ABI provider;

7. Changing the case management agency;

8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

1 9. Relocated to a different address; and

2 (o) Provide information about participant-directed services to the participant or the
3 participant's guardian;

4 1. At the time the initial person-centered service plan is developed; and

5 2. At least annually thereafter and upon inquiry from the participant or participant's
6 guardian.

7 (3) A case management provider shall:

8 (a) Establish a human rights committee which shall:

9 1. Include an:

10 a. Individual with a brain injury or a family member of an individual with a brain injury;

11 b. Individual not affiliated with the ABI provider; and

12 c. Individual who has knowledge and experience in human rights issues;

13 2. Review and approve each person-centered service plan with human rights re-
14 strictions at a minimum of every six (6) months;

15 3. Review and approve, in conjunction with the participant's team, behavior interven-
16 tion plans that contain human rights restrictions; and

17 4. Review the use of a psychotropic medication by a participant without an Axis I di-
18 agnosis;

19 (b) Establish a behavior intervention committee which shall:

20 1. Include one (1) individual who has expertise in behavior intervention and is not the
21 behavior specialist who wrote the behavior intervention plan;

22 2. Be separate from the human rights committee; and

23 3. Review and approve, prior to implementation and at a minimum of every six (6)

months in conjunction with the participant's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each participant:

1. Within thirty (30) days of the participant's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

(4)(a) Case management for any participant who begins receiving ABI waiver services after the effective date of this administrative regulation shall be conflict free.

(b)1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified ABI waiver services provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department, that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

1 d. The participant, participant's representative, or case manager uploads the com-
2 pleted MAP - 531 Conflict-Free Case Management Exemption into the MWMA portal.

3 3. If a case management service is approved to be provided despite not being con-
4 flict free, the case management provider shall document conflict of interest protections,
5 separating case management and service provision functions within the provider entity
6 and demonstrate that the participant is provided with a clear and accessible alternative
7 dispute resolution process.

8 4. An exemption to the conflict free case management requirement shall be request-
9 ed upon reassessment or at least annually.

10 (c) A participant who receives ABI waiver services prior to the effective date of this
11 administrative regulation shall transition to conflict free case management when the
12 participant's next level of care determination occurs.

13 (d) During the transition to conflict free case management any case manager provid-
14 ing case management to a participant shall educate the participant and members of the
15 participant's person-centered team of the conflict free case management requirement in
16 order to prepare the participant to decide, if necessary, to change the participant's:

17 1. Case manager; or

18 2. Provider of non-case management ABI waiver services.

19 (5) Case management shall:

20 (a) Include initiation, coordination, implementation, and monitoring of the assessment
21 or reassessment, evaluation, intake, and eligibility process;

22 (b) Assist a participant in the identification, coordination, and facilitation of the person
23 centered team and person centered team meetings;

1 (c) Assist a participant and the person-centered team to develop an individualized
2 person-centered service plan and update it as necessary based on changes in the par-
3 ticipant's medical condition and supports;

4 (d) Include monitoring of the delivery of services and the effectiveness of the person-
5 centered service plan, which shall:

6 1. Be initially developed with the participant and legal representative if appointed pri-
7 or to the level of care determination;

8 2. Be updated within the first thirty (30) days of service and as changes or recertifica-
9 tion occurs; and

10 3. Include the person-centered service plan being sent to the department or its de-
11 signee prior to the implementation of the effective date the change occurs with the par-
12 ticipant;

13 (e) Include a transition plan that shall be developed within the first thirty (30) days of
14 service, updated as changes or recertification occurs, updated thirty (30) days prior to
15 discharge, and shall include:

16 1. The skills or service obtained from the ABI waiver program upon transition into the
17 community;

18 2. A listing of the community supports available upon the transition; and

19 3. The expected date of transition from the ABI waiver program;

20 (f) Assist a participant in obtaining a needed service outside those available by the
21 ABI waiver;

22 (g) Be provided by a case manager who:

23 1.a. Is a registered nurse;

1 b. Is a licensed practical nurse;

2 c. Is an individual who has a bachelor's or master's degree in a human services field
3 who meets all applicable requirements of his or her particular field including a degree in
4 psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

5 d. Is an independent case manager; or

6 e. Is employed by a free-standing case management agency;

7 2. Has completed case management training that is consistent with the curriculum
8 that has been approved by the department prior to providing case management ser-
9 vices;

10 3. Shall provide a participant and legal representative with a listing of each available
11 ABI provider in the service area;

12 4. Shall maintain documentation signed by a participant or legal representative of in-
13 formed choice of an ABI provider and of any change to the selection of an ABI provider
14 and the reason for the change;

15 5. Shall provide a distribution of the crisis prevention and response plan, transition
16 plan, person-centered service plan, and other documents within the first thirty (30) days
17 of the service to the chosen ABI service provider and as information is updated;

18 6. Shall provide twenty-four (24) hour telephone access to a participant and chosen
19 ABI provider;

20 7. Shall work in conjunction with an ABI provider selected by a participant to develop
21 a crisis prevention and response plan which shall be:

22 a. Individual-specific; and

23 b. Updated as a change occurs and at each recertification;

1 8. Shall assist a participant in planning resource use and assuring protection of re-
2 sources;

3 9.a. Shall conduct two (2) face-to-face meetings with a participant within a calendar
4 month occurring at a covered service site no more than fourteen (14) days apart, with
5 one (1) visit quarterly at the participant's residence; and

6 b. For a participant receiving supervised residential care, shall conduct at least one
7 (1) of the two (2) monthly visits at the participant's supervised residential care provider
8 site;

9 10. Shall ensure twenty-four (24) hour availability of services; and

10 11. Shall ensure that the participant's health, welfare, and safety needs are met; and

11 (h) Be documented by a detailed staff note which shall include:

12 1. The participant's health, safety, and welfare;

13 2. Progress toward outcomes identified in the approved person-centered service
14 plan;

15 3. The date of the service;

16 4. Beginning and ending time;

17 5. The signature and title of the individual providing the service; and

18 6. A quarterly summary which shall include:

19 a. Documentation of monthly contact with each chosen ABI provider; and

20 b. Evidence of monitoring of the delivery of services approved in the participant's
21 person-centered service plan and of the effectiveness of the person-centered service
22 plan.

23 (6) Case management shall involve:

1 (a) A constant recognition of what is and is not working regarding a participant; and

2 (b) Changing what is not working.

3 Section 6. Covered Services. (1) An ABI waiver service shall:

4 (a) Not be covered unless it has been [Be:] prior-authorized by the department; and

5 (b) Be provided pursuant to the participant's person-centered service plan [of care].

6 (2) The following services shall be provided to a participant [an ABI recipient] by an
7 ABI waiver provider:

8 (a) Case management services in accordance with Section 4 of this administrative
9 regulation [, which shall:

10 1. Include initiation, coordination, implementation, and monitoring of the assessment
11 or reassessment, evaluation, intake, and eligibility process;

12 2. Assist an ABI recipient in the identification, coordination, and facilitation of the in-
13 terdisciplinary team and [interdisciplinary team meetings;

14 3. Assist an ABI recipient and the interdisciplinary team to develop an individualized
15 plan of care and update it as necessary based on changes in the recipient's medical
16 condition and supports;

17 4. Include monitoring of the delivery of services and the effectiveness of the plan of
18 care, which shall:

19 a. Be initially developed with the ABI recipient and legal representative if appointed
20 prior to the level of care determination;

21 b. Be updated within the first thirty (30) days of service and as changes or recertifica-
22 tion occurs; and

23 c. Include the MAP-100 being sent to the department or its designee prior to the im-

~~plementation of the effective date the change occurs with the ABI recipient;~~

~~5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, updated thirty (30) days prior to discharge, and shall include:~~

~~a. The skills or service obtained from the ABI waiver program upon transition into the community; and~~

~~b. A listing of the community supports available upon the transition;~~

~~6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;~~

~~7. Be provided by a case manager who:~~

~~a.(i) Is a registered nurse;~~

~~(ii) Is a licensed practical nurse;~~

~~(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;~~

~~(iv) Is an independent case manager; or~~

~~(v) Is employed by a free-standing case management agency;~~

~~b. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;~~

~~c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;~~

1 ~~d. Shall maintain documentation signed by an ABI recipient or legal representative of~~
2 ~~informed choice of an ABI provider and of any change to the selection of an ABI provid-~~
3 ~~er and the reason for the change;~~

4 ~~e. Shall provide a distribution of the crisis prevention and response plan, transition~~
5 ~~plan, plan of care, and other documents within the first thirty (30) days of the service to~~
6 ~~the chosen ABI service provider and as information is updated;~~

7 ~~f. Shall provide twenty-four (24) hour telephone access to an ABI recipient and cho-~~
8 ~~sen ABI provider;~~

9 ~~g. Shall work in conjunction with an ABI provider selected by an ABI recipient to de-~~
10 ~~velop a crisis prevention and response plan which shall be:~~

11 ~~(i) Individual specific; and~~

12 ~~(ii) Updated as a change occurs and at each recertification;~~

13 ~~h. Shall assist an ABI recipient in planning resource use and assuring protection of~~
14 ~~resources;~~

15 ~~i. (i) Shall conduct two (2) face-to-face meetings with an ABI recipient within a calen-~~
16 ~~dar month occurring at a covered service site no more than fourteen (14) days apart,~~
17 ~~with one (1) visit quarterly at the ABI recipient's residence; and~~

18 ~~(ii) For an ABI recipient receiving supervised residential care, shall conduct at least~~
19 ~~one (1) of the two (2) monthly visits at the ABI recipient's supervised residential care~~
20 ~~provider site;~~

21 ~~j. Shall ensure twenty-four (24) hour availability of services; and~~

22 ~~k. Shall ensure that the ABI recipient's health, welfare, and safety needs are met;~~

23 ~~and~~

~~8. Be documented by a detailed staff note which shall include:~~

~~a. The ABI recipient's health, safety and welfare;~~

~~b. Progress toward outcomes identified in the approved plan of care;~~

~~c. The date of the service;~~

~~d. Beginning and ending time;~~

~~e. The signature and title of the individual providing the service; and~~

~~f. A quarterly summary which shall include:~~

~~(i) Documentation of monthly contact with each chosen ABI provider; and~~

~~(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care and of the effectiveness of the plan of care];~~

(b) Behavior programming services which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the participant's~~[ABI recipient's]~~ behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

- 1 a. Be developed by the behavioral specialist;
- 2 b. Not be implemented by the behavior specialist who wrote the plan;
- 3 c. Be revised as necessary;
- 4 d. Define the techniques and procedures used;
- 5 e. Include the hierarchy of behavior interventions ranging from the least to the most
- 6 restrictive;
- 7 f. Reflect the use of positive approaches; and
- 8 g. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, ver-
- 9 bal abuse, and any procedure which denies private communication, requisite sleep,
- 10 shelter, bedding, food, drink, or use of a bathroom facility;
- 11 4. Include the provision of training to other ABI providers concerning implementation
- 12 of the behavioral intervention plan;
- 13 5. Include the monitoring of a participant's ~~[an ABI recipient's]~~ progress which shall
- 14 be accomplished through:
- 15 a. The analysis of data concerning the frequency, intensity, and duration of a behav-
- 16 ior;
- 17 b. Reports involved in implementing the behavioral service plan; and
- 18 c. A monthly summary which assesses the participant's status related to the plan of
- 19 care;
- 20 6. Be provided by a behavior specialist who shall:
- 21 a.(i) Be a psychologist;
- 22 (ii) Be a psychologist with autonomous functioning;
- 23 (iii) Be a licensed psychological associate;

- (iv) Be a psychiatrist;
 - (v) Be a licensed clinical social worker;
 - (vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;
 - (vii) Be an advanced practice registered nurse [(APRN)];
 - (viii) Be a board certified behavior analyst; or
 - (ix) Be a licensed professional clinical counselor; and
- b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and
7. Be documented by a detailed staff note which shall include:
- a. The date of the service;
 - b. The beginning and ending time; and
 - c. The signature and title of the behavioral specialist;
- (c) Companion services which shall:
- 1. Include a nonmedical service, supervision or socialization as indicated in the recipient's plan of care;
 - 2. Include assisting with but not performing meal preparation, laundry and shopping;
 - 3. Include light housekeeping tasks which are incidental to the care and supervision of a participant [~~an ABI waiver service recipient~~];
 - 4. Include services provided according to the approved plan of care which are therapeutic and not diversional in nature;
 - 5. Include accompanying and assisting a participant [~~an ABI recipient~~] while utilizing

1 transportation services;

2 6. Include documentation by a detailed staff note which shall include:

3 a. Progress toward goal and objectives identified in the approved plan of care;

4 b. The date of the service;

5 c. Beginning and ending time; and

6 d. The signature and title of the individual providing the service;

7 7. Not be provided to a participant ~~[an ABI recipient]~~ who receives supervised resi-
8 dential care; and

9 8. Be provided by:

10 a. A home health agency licensed and operating in accordance with 902 KAR
11 20:081;

12 b. A community mental health center licensed and operating in accordance with 902
13 KAR 20:091 and certified at least annually by the department;

14 c. A community habilitation program certified by the department; or

15 d. A supervised residential care provider;

16 (d) Supervised residential care level I services, which:

17 1. Shall be provided by:

18 a. A community mental health center licensed and operating in accordance with 902
19 KAR 20:091 and certified at least annually by the department; or

20 b. An ABI provider;

21 2. Shall not be provided to a participant ~~[an ABI recipient]~~ unless the participant ~~[re-~~
22 ~~ipient]~~ has been authorized to receive residential care by the department's residential
23 review committee which shall:

1 a. Consider applications for residential care in the order in which the applications are
2 received;

3 b. Base residential care decisions on the following factors:

4 (i) Whether the applicant resides with a caregiver or not;

5 (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive be-
6 havior which places the applicant at significant risk of injury or jeopardy if the caregiver
7 is unable to effectively manage the applicant's behavior or the risk it poses, resulting in
8 the need for removal from the home to a more structured setting; or

9 (iii) Whether the applicant demonstrates behavior which may result in potential legal
10 problems if not ameliorated;

11 c. Be comprised of three (3) Cabinet for Health and Family Services employees:

12 (i) With professional or personal experience with brain injury or other cognitive disa-
13 bilities; and

14 (ii) None of whom shall be supervised by the manager of the acquired brain injury
15 branch; and

16 d. Only consider applications at a monthly committee meeting if the applications
17 were received at least three (3) business days before the committee convenes;

18 3. Shall not have more than three (3) participants [~~ABI-recipients~~] simultaneously in a
19 residence rented or owned by the ABI provider;

20 4. Shall provide twenty-four (24) hours of supervision daily unless the provider im-
21 plements, pursuant to subparagraph 5 of this paragraph, an individualized plan allowing
22 for up to five (5) unsupervised hours per day;

23 5. May include the provision of up to five (5) unsupervised hours per day per partici-

part [~~recipient~~] if the provider develops an individualized plan for the participant [~~recipient~~] to promote increased independence. The plan shall:

a. Contain provisions necessary to ensure the participant's [~~recipient's~~] health, safety, and welfare;

b. Be approved by the participant's [~~recipient's~~] treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's [~~recipient's~~] status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

1 7. Shall include social skills training including the reduction or elimination of mala-
2 daptive behaviors in accordance with the participant's person-centered service [~~individ-~~
3 ~~ual's-~~] plan [~~of care~~];

4 8. Shall include provision or arrangement of transportation to services, activities, or
5 medical appointments as needed;

6 9. Shall include accompanying or assisting a participant [~~an ABI recipient~~] while the
7 participant [~~recipient~~] utilizes transportation services as specified in the participant's
8 person-centered service [~~recipient's~~] plan [~~of care~~];

9 10. Shall include participation in medical appointments or follow-up care as directed
10 by the medical staff;

11 11. Shall be documented by a detailed staff note which shall document:

12 a. Progress toward goals and objectives identified in the approved person-centered
13 service plan [~~of care~~];

14 b. The date of the service;

15 c. The beginning and ending time of the service; and

16 d. The signature and title of the individual providing the service;

17 12. Shall not include the cost of room and board;

18 13. Shall be provided to a participant [~~an ABI recipient~~] who:

19 a. Does not reside with a caregiver;

20 b. Is residing with a caregiver but demonstrates maladaptive behavior that places
21 him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively
22 manage the behavior or the risk it presents, resulting in the need for removal from the
23 home to a more structured setting; or

1 c. Demonstrates behavior that may result in potential legal problems if not ameliorat-
2 ed;

3 14. May utilize a modular home only if the:

4 a. Wheels are removed;

5 b. Home is anchored to a permanent foundation; and

6 c. Windows are of adequate size for an adult to use as an exit in an emergency;

7 15. Shall not utilize a motor home;

8 16. Shall provide a sleeping room which ensures that a participant ~~[an ABI recipient]~~:

9 a. Does not share a room with an individual of the opposite gender who is not the
10 participant's ~~[ABI recipient's]~~ spouse;

11 b. Does not share a room with an individual who presents a potential threat; and

12 c. Has a separate bed equipped with substantial springs, a clean and comfortable
13 mattress, and clean bed linens as required for the participant's ~~[ABI recipient's]~~ health
14 and comfort; and

15 17. Shall provide service and training to obtain the outcomes for the participant ~~[ABI~~
16 ~~recipient]~~ as identified in the approved person-centered service plan ~~[of care]~~;

17 (e) Supervised residential care level II services~~[;]~~ which~~[;~~

18 ~~4-]~~ shall;

19 1. Meet the requirements established in paragraph (d) of this subsection except for
20 the requirements established in paragraph (d)4 and 5; ~~[be provided by:~~

21 ~~a. A community mental health center licensed and operating in accordance with 902~~
22 ~~KAR 20:091 and certified at least annually by the department; or~~

23 ~~b. An ABI provider;]~~

2. ~~[Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:~~

a. ~~Consider applications for residential care in the order in which the applications are received;~~

b. ~~Base residential care decisions on the following factors:~~

(i) ~~Whether the applicant resides with a caregiver or not;~~

(ii) ~~Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or~~

(iii) ~~Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;~~

c. ~~Be comprised of three (3) Cabinet for Health and Family Services employees:~~

(i) ~~With professional or personal experience with brain injury or other cognitive disabilities; and~~

(ii) ~~None of whom shall be supervised by the manager of the acquired brain injury branch; and~~

d. ~~Only consider applications at a monthly committee meeting if the applications were received at least three (3) business days before the committee convenes;~~

3. ~~Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider~~

4. ~~Shall] Provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:~~

- a. Be based on the participant's [recipient's] needs;
- b. Be approved by the participant's [recipient's] treatment team; and
- c. Be documented in the participant's person-centered service [recipient's] plan [of care] which shall also contain periodic reviews and updates based on changes, if any, in the participant's [recipient's] status; and

3. [5. Shall include assistance and training with daily living skills including:

- a. Ambulating;
- b. Dressing;
- c. Grooming;
- d. Eating;
- e. Toileting;
- f. Bathing;
- g. Meal planning;
- h. Grocery shopping;
- i. Meal preparation;
- j. Laundry;
- k. Budgeting and financial matters;
- l. Home care and cleaning;
- m. Leisure skill instruction; or
- n. Self-medication instruction;

6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

7. Shall include provision or arrangement of transportation to services, activities, or

1 ~~medical appointments as needed;~~

2 ~~8. Shall include accompanying or assisting an ABI recipient while the recipient utiliz-~~
3 ~~es transportation services as specified in the recipient's plan of care;~~

4 ~~9. Shall include participation in medical appointments or follow-up care as directed~~
5 ~~by the medical staff;~~

6 ~~10. Shall] Include provision of twenty-four (24) hour on-call support;~~

7 ~~[11. Shall be documented by a detailed staff note which shall document:~~

8 ~~a. Progress toward goals and objectives identified in the approved plan of care;~~

9 ~~b. The date of the service;~~

10 ~~c. The beginning and ending time of the service; and~~

11 ~~d. The signature and title of the individual providing the service;~~

12 ~~12. Shall not include the cost of room and board;~~

13 ~~13. Shall be provided to an ABI recipient who:~~

14 ~~a. Does not reside with a caregiver;~~

15 ~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places~~
16 ~~him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively~~
17 ~~manage the behavior or the risk it presents, resulting in the need for removal from the~~
18 ~~home to a more structured setting; or~~

19 ~~c. Demonstrates behavior that may result in potential legal problems if not ameliorat-~~
20 ~~ed;~~

21 ~~14. May utilize a modular home only if the:~~

22 ~~a. Wheels are removed;~~

23 ~~b. Home is anchored to a permanent foundation; and~~

~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~

~~15. Shall not utilize a motor home;~~

~~16. Shall provide a sleeping room which ensures that an ABI recipient:~~

~~a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;~~

~~b. Does not share a room with an individual who presents a potential threat; and~~

~~c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the participant's [ABI recipient's] health and comfort; and~~

~~17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;]~~

~~(f) Supervised residential care level III services[;] which[; 1.] shall:~~

~~1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5;[be provided by:~~

~~a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or~~

~~b. An ABI provider;~~

~~2. [Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:~~

~~a. Consider applications for residential care in the order in which the applications are received;~~

~~b. Base residential care decisions on the following factors:~~

1 ~~(i) Whether the applicant resides with a caregiver or not;~~

2 ~~(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive be-~~
3 ~~havior which places the applicant at significant risk of injury or jeopardy if the caregiver~~
4 ~~is unable to effectively manage the applicant's behavior or the risk it poses, resulting in~~
5 ~~the need for removal from the home to a more structured setting; or~~

6 ~~(iii) Whether the applicant demonstrates behavior which may result in potential legal~~
7 ~~problems if not ameliorated;~~

8 ~~c. Be comprised of three (3) Cabinet for Health and Family Services employees:~~

9 ~~(i) With professional or personal experience with brain injury or other cognitive disa-~~
10 ~~bilities; and~~

11 ~~(ii) None of whom shall be supervised by the manager of the acquired brain injury~~
12 ~~branch; and~~

13 ~~d. Only consider applications at a monthly committee meeting if the applications~~
14 ~~were received at least three (3) business days before the committee convenes;~~

15 ~~3. Shall] Be provided in a single family home, duplex or apartment building to a par-~~
16 ~~ticipant [an ABI recipient] who lives alone or with an unrelated roommate;~~

17 ~~3.[4. Shall] Not be provided to more than two (2) participants [ABI recipients] simul-~~
18 ~~taneously in one (1) apartment or home;~~

19 ~~4.[5. Shall] Not be provided in more than two (2) apartments in one (1) building;~~

20 ~~5.[6. Shall,] If provided in an apartment building, have staff:~~

21 ~~a. Available twenty-four (24) hours per day and seven (7) days per week; and~~

22 ~~b. Who do not reside in a dwelling occupied by a participant [an ABI recipient]; and~~

23 ~~6.[7. Shall] Provide less than twelve (12) hours of supervision or support in the resi-~~

1 dence based on an individualized plan developed by the provider to promote increased
2 independence which shall

3 a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

4 b. Be approved by the participant's [recipient's] treatment team, with the approval
5 documented by the provider; and

6 c. Contain periodic reviews and updates based on changes, if any, in the parti-
7 pant's [recipient's] status;

8 ~~[8. Shall include assistance and training with daily living skills including:~~

9 ~~a. Ambulating;~~

10 ~~b. Dressing;~~

11 ~~c. Grooming;~~

12 ~~d. Eating;~~

13 ~~e. Toileting;~~

14 ~~f. Bathing;~~

15 ~~g. Meal planning;~~

16 ~~h. Grocery shopping;~~

17 ~~i. Meal preparation;~~

18 ~~j. Laundry;~~

19 ~~k. Budgeting and financial matters;~~

20 ~~l. Home care and cleaning;~~

21 ~~m. Leisure skill instruction; or~~

22 ~~n. Self-medication instruction;~~

23 ~~. Shall include social skills training including the reduction or elimination of mala-~~

daptive behaviors in accordance with the individual's plan of care;

~~10. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;~~

~~11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;~~

~~12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;~~

~~13. Shall be documented by a detailed staff note which shall document:~~

~~a. Progress toward goals and objectives identified in the approved plan of care;~~

~~b. The date of the service;~~

~~c. The beginning and ending time of the service;~~

~~d. The signature and title of the individual providing the service; and~~

~~e. Evidence of at least one (1) daily face-to-face contact with the ABI recipient;~~

~~14. Shall not include the cost of room and board;~~

~~15. Shall be provided to an ABI recipient who:~~

~~a. Does not reside with a caregiver;~~

~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or~~

~~c. Demonstrates behavior that may result in potential legal problems if not ameliorated;~~

~~16. May utilize a modular home only if the:~~

- ~~a. Wheels are removed;~~
- ~~b. Home is anchored to a permanent foundation; and~~
- ~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~
- ~~17. Shall not utilize a motor home;~~
- ~~18. Shall provide a sleeping room which ensures that an ABI recipient:~~
 - ~~a. Does not share a room with an individual of the opposite gender who is not the~~
 - ~~ABI recipient's spouse;~~
 - ~~b. Does not share a room with an individual who presents a potential threat; and~~
 - ~~c. Has a separate bed equipped with substantial springs, a clean and comfortable~~
 - ~~mattress, and clean bed linens as required for the ABI recipient's health and comfort;~~
 - ~~and~~
 - ~~19. Shall provide service and training to obtain the outcomes for the ABI recipient as~~
 - ~~identified in the approved plan of care;]~~
- (g) Counseling services which:
 1. Shall be designed to help a participant ~~[an ABI waiver service recipient]~~ resolve personal issues or interpersonal problems resulting from his or her ABI;
 2. Shall assist a family member in implementing ~~[an ABI waiver service recipient's]~~ approved person-centered service plan ~~[of care]~~;
 3. In a severe case, shall be provided as an adjunct to behavioral programming;
 4. Shall include substance abuse or chemical dependency treatment, if needed;
 5. Shall include building and maintaining healthy relationships;
 6. Shall develop social skills or the skills to cope with and adjust to the brain injury;
 7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) participants [~~ABI-re-~~
~~ipients~~]; and

b. Included in the participant's [~~recipient's~~] approved person-centered service plan [~~of~~
~~care~~] for:

(i) Substance abuse or chemical dependency treatment, if needed;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of
cognitive remediation strategies consisting of the development of compensatory
memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury
upon the participant's [~~ABI-recipient's~~] functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced practice registered nurse [~~(APRN)~~]; or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; [~~or~~]

1 j. A licensed professional clinical counselor;

2 k. A licensed clinical alcohol and drug counselor associate effective and contingent
3 upon approval by the Centers for Medicare and Medicaid Services; or

4 l. A licensed clinical alcohol and drug counselor effective and contingent upon ap-
5 proval by the Centers for Medicare and Medicaid Services; and

6 10. Shall be documented by a detailed staff note which shall include:

7 a. Progress toward the goals and objectives established in the person-centered ser-
8 vice plan ~~[ef-care]~~;

9 b. The date of the service;

10 c. The beginning and ending time; and

11 d. The signature and title of the individual providing the service;

12 (h) Occupational therapy which shall be:

13 1. A physician-ordered evaluation of a participant's ~~[an ABI-recipient's]~~ level of func-
14 tioning by applying diagnostic and prognostic tests;

15 2. Physician-ordered services in a specified amount and duration to guide a partici-
16 part ~~[an ABI-recipient]~~ in the use of therapeutic, creative, and self-care activities to as-
17 sist the participant ~~[ABI-recipient]~~ in obtaining the highest possible level of functioning;

18 3. Exclusive of maintenance or the prevention of regression;

19 4. Provided by an occupational therapist or an occupational therapy assistant if su-
20 pervised by an occupational ~~[occupation]~~ therapist in accordance with 201 KAR 28:130;

21 and

22 5. Documented by a detailed staff note which shall include:

23 a. Progress toward goal and objectives identified in the approved person-centered

1 service plan [~~of care~~];

2 b. The date of the service;

3 c. Beginning and ending time; and

4 d. The signature and title of the individual providing the service;

5 (i) Personal care services which shall:

6 1. Include the retraining of a participant [~~an ABI-waiver service recipient~~] in the per-
7 formance of an activity of daily living by using repetitive, consistent and ongoing instruc-
8 tion and guidance;

9 2. Be provided by:

10 a. An adult day health care center licensed and operating in accordance with 902
11 KAR 20:066;

12 b. A home health agency licensed and operating in accordance with 902 KAR
13 20:081;

14 c. A personal services agency; or

15 d. Another ABI provider;

16 3. Include the following activities of daily living:

17 a. Eating, bathing, dressing or personal hygiene;

18 b. Meal preparation; and

19 c. Housekeeping chores including bed-making, dusting and vacuuming;

20 4. Be documented by a detailed staff note which shall include:

21 a. Progress toward goal and objectives identified in the approved person-centered
22 service plan [~~of care~~];

23 b. The date of the service;

1 c. Beginning and ending time; and

2 d. The signature and title of the individual providing the service; and

3 5. Not be provided to a participant ~~[an ABI recipient]~~ who receives supervised resi-
4 dential care

5 (j) A respite service which shall:

6 1. Be provided only to a participant ~~[an ABI recipient]~~ unable to administer self-care;

7 2. Be provided by a:

8 a. Nursing facility;

9 b. Community mental health center;

10 c. Home health agency;

11 d. Supervised residential care provider; or

12 e. Community habilitation program;

13 3. Be provided on a short-term basis due to absence or need for relief of a non-paid
14 primary caregiver ~~[an individual providing care to an ABI recipient]~~;

15 4. Be limited to 336 hours per one (1) year authorized person-centered service plan
16 ~~[in a twelve (12) month]~~ period unless an individual's non-paid ~~[normal]~~ caregiver is un-
17 able to provide care due to a:

18 a. Death in the family;

19 b. Serious illness; or

20 c. Hospitalization;

21 5. Not be provided to a participant ~~[an ABI recipient]~~ who receives supervised resi-
22 dential care;

23 6. Not include the cost of room and board if provided in a nursing facility; and

1 7. Be documented by a detailed staff note which shall include:

2 a. Progress toward goals and objectives identified in the approved person-centered
3 service plan [~~of care~~];

4 b. The date of the service;

5 c. The beginning and ending time; and

6 d. The signature and title of the individual providing the service;

7 (k) Speech-~~[, hearing and]~~ language pathology services which shall be:

8 1. A physician-ordered evaluation of a participant [~~an ABI recipient~~] with a speech,
9 hearing, or language disorder;

10 2. A physician-ordered habilitative service in a specified amount and duration to as-
11 sist a participant [~~an ABI recipient~~] with a speech and language disability in obtaining
12 the highest possible level of functioning;

13 3. Exclusive of maintenance or the prevention of regression;

14 4. Provided by a speech language pathologist; and

15 5. Documented by a detailed staff note which shall include:

16 a. Progress toward goals and objectives identified in the approved person-centered
17 service plan [~~of care~~];

18 b. The date of the service;

19 c. The beginning and ending time; and

20 d. The signature and title of the individual providing the service;

21 (l) Adult day training services which shall:

22 1. Be provided by:

23 a. An adult day health care center which is certified by the department and licensed

- 1 and operating in accordance with 902 KAR 20:066;
- 2 b. An outpatient rehabilitation facility which is certified by the department and li-
- 3 censed and operating in accordance with 902 KAR 20:190;
- 4 c. A community mental health center licensed and operating in accordance with 902
- 5 KAR 20:091;
- 6 d. A community habilitation program;
- 7 e. A sheltered employment program; or
- 8 f. A therapeutic rehabilitation program;
- 9 2. Rehabilitate, retrain and reintegrate a participant ~~[an individual]~~ into the communi-
- 10 ty;
- 11 3. Not exceed a staffing ratio of five (5) participants ~~[ABI-recipients]~~ per one (1) staff
- 12 person, unless a participant ~~[an ABI-recipient]~~ requires individualized special service;
- 13 4. Include the following services:
- 14 a. Social skills training related to problematic behaviors identified in the participant's
- 15 person-centered service ~~[recipient's]~~ plan ~~[of care]~~;
- 16 b. Sensory or motor development;
- 17 c. Reduction or elimination of a maladaptive behavior;
- 18 d. Prevocational; or
- 19 e. Teaching concepts and skills to promote independence including:
- 20 (i) Following instructions;
- 21 (ii) Attendance and punctuality;
- 22 (iii) Task completion;
- 23 (iv) Budgeting and money management;

- 1 (v) Problem solving; or
- 2 (vi) Safety;
- 3 5. Be provided in a nonresidential setting;
- 4 6. Be developed in accordance with a participant's ~~[an ABI-waiver service recipient's]~~
- 5 overall approved person-centered service plan ~~[of care]~~;
- 6 7. Reflect the recommendations of a participant's ~~[an ABI-waiver service recipient's]~~
- 7 interdisciplinary team;
- 8 8. Be appropriate:
- 9 a. Given a participant's ~~[an ABI-waiver service recipient's]~~ age, level of cognitive and
- 10 behavioral function and interest;
- 11 b. Given a participant's ~~[an ABI-waiver service recipient's]~~ ability prior to and since
- 12 his or her injury; and
- 13 c. According to the approved person-centered service plan ~~[of care]~~ and be thera-
- 14 peutic in nature and not diversional;
- 15 9. Be coordinated with occupational, speech, or other rehabilitation therapy included
- 16 in a participant's person-centered service ~~[an ABI-waiver service recipient's]~~ plan ~~[of~~
- 17 ~~care]~~;
- 18 10. Provide a participant ~~[an ABI-waiver service recipient]~~ with an organized frame-
- 19 work within which to function in his or her daily activities;
- 20 11. Entail frequent assessments of a participant's ~~[an ABI-waiver service recipient's]~~
- 21 progress and be appropriately revised as necessary; and
- 22 12. Be documented by a detailed staff note which shall include:
- 23 a. Progress toward goal and objectives identified in the approved person-centered

- 1 service plan ~~[of care]~~;
- 2 b. The date of the service;
- 3 c. The beginning and ending time;
- 4 d. The signature and title of the individual providing the service; and
- 5 e. A monthly summary that assesses the participant's status related to the approved
- 6 person-centered service plan ~~[of care]~~;
- 7 (m) Supported employment services which shall be:
 - 8 1. Intensive, ongoing services for a participant ~~[an ABI recipient]~~ to maintain paid
 - 9 employment in an environment in which an individual without a disability is employed;
 - 10 2. Provided by a:
 - 11 a. Supported employment provider;
 - 12 b. Sheltered employment provider; or
 - 13 c. Structured day program provider;
 - 14 3. Provided one-on-one;
 - 15 4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29
 - 16 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall
 - 17 be documented in the participant's ~~[ABI recipient's]~~ file;
 - 18 5. Limited to forty (40) hours per week alone or in combination with structured day
 - 19 services;
 - 20 6. An activity needed to sustain paid work by a participant ~~[an ABI recipient]~~ receiving
 - 21 waiver services including supervision and training;
 - 22 7. Exclusive of work performed directly for the supported employment provider; and
 - 23 8. Documented by a time and attendance record which shall include:

- 1 a. Progress towards the goals and objectives identified in the person-centered ser-
2 vice plan [of care];
- 3 b. The date of service;
- 4 c. The beginning and ending time; and
- 5 d. The signature and title of the individual providing the service;
- 6 (n) Specialized medical equipment and supplies which shall:
 - 7 1. Include durable and nondurable medical equipment, devices, controls, appliances,
8 or ancillary supplies;
 - 9 2. Enable a participant [an ABI recipient] to increase his or her ability to perform daily
10 living activities or to perceive, control, or communicate with the environment;
 - 11 3. Be ordered by a physician, documented in a participant's person-centered service
12 plan, entered into the MWMA portal by the participant's case manager or support bro-
13 ker, and ~~[submitted on a Request for Equipment form, MAP 95, and]~~ include three (3)
14 estimates if the equipment is needed for vision and hearing;
 - 15 4. Include equipment necessary to the proper functioning of specialized items;
 - 16 5. Not be available through the department's durable medical equipment, vision or
17 hearing programs;
 - 18 6. Not be necessary for life support;
 - 19 7. Meet applicable standards of manufacture, design and installation; and
 - 20 8. Exclude those items which are not of direct medical or remedial benefit to a partic-
21 ipant [an ABI recipient];
- 22 (o) Environmental modifications which shall:
 - 23 1. Be provided in accordance with applicable state and local building codes;

2. Be provided to a participant ~~[an ABI recipient]~~ if:

a. Ordered by a physician;

b. Prior-authorized by the department;

c. Specified in the participant's approved person-centered service plan and entered into the MWMA portal ~~[Submitted on a Request for Equipment form, MAP-95,]~~ by the participant's ~~[a]~~ case manager or support broker;

d. ~~[Specified in an ABI recipient's approved plan of care;~~

e.] Necessary to enable a participant ~~[an ABI recipient]~~ to function with greater independence within his or her home; and

e.[f.] Without the modification, the participant ~~[ABI recipient]~~ would require institutionalization;

3. Not include a vehicle modification;

4. Be limited to no more than \$2,000 for a participant ~~[an ABI recipient]~~ in a twelve (12) month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(p) An assessment which shall:

1. Be a comprehensive assessment which shall identify:

a. A participant's ~~[An ABI waiver recipient's]~~ needs; and

b. Services that a participant's ~~[an ABI recipient's]~~ family cannot manage or arrange for the participant ~~[recipient]~~;

2. Evaluate a participant's ~~[an ABI waiver recipient's]~~ physical health, mental health,

1 social supports, and environment;

2 3. Be requested by:

3 a. An individual requesting ABI waiver services;

4 b. A family member of the individual requesting ABI services; or

5 c. A legal representative of the individual requesting ABI services;

6 4. Be conducted:

7 a. By an ABI case manager or support broker; and

8 b. Within seven (7) calendar days of receipt of the request for an assessment;

9 5. Include at least one (1) face-to-face contact in the participant's ~~[ABI-waiver recipi-~~
10 ~~ent's]~~ home between the assessor, the participant ~~[ABI-waiver recipient]~~, and, if appro-
11 priate, the participant's ~~[recipient's]~~ family; and

12 6. Not be reimbursable if the individual no longer meets ABI program eligibility re-
13 quirements; or

14 (q) A reassessment, which shall:

15 1. Be performed at least once every twelve (12) months;

16 2. Be conducted:

17 a. Using the same procedures as for an assessment; and

18 b. By an ABI case manager or support broker;

19 3. Be timely conducted to enable the results to be submitted to the department within
20 three (3) weeks prior to the expiration of the current level of care certification to ensure
21 that certification is consecutive;

22 4. Not be reimbursable if the individual no longer meets ABI program eligibility re-
23 quirements; and

1 5. Not be retroactive.

2 Section 7.[5.] Exclusions of the Acquired Brain Injury Waiver Program. A condition
3 included in the following list shall not be considered an acquired brain injury requiring
4 specialized rehabilitation:

5 (1) A stroke treatable in a nursing facility providing routine rehabilitation services;

6 (2) A spinal cord injury for which there is no known or obvious injury to the intracrani-
7 al central nervous system;

8 (3) Progressive dementia or another condition related to mental impairment that is of
9 a chronic degenerative nature, including senile dementia, organic brain disorder, Alz-
10 heimer's Disease, alcoholism or another addiction;

11 (4) A depression or a psychiatric disorder in which there is no known or obvious cen-
12 tral nervous system damage;

13 (5) A birth defect;

14 (6) An intellectual disability [~~Mental retardation~~] without an etiology to an acquired
15 brain injury;

16 (7) A condition which causes an individual to pose a level of danger or an aggression
17 which is unable to be managed and treated in a community; or

18 (8) Determination that the participant [~~recipient~~] has met his or her maximum rehabili-
19 tation potential.

20 Section 8.[6.] Incident Reporting Process. (1)(a) There shall be two (2) classes of in-
21 cidents.

22 (b) The following shall be the two (2) classes of incidents:

23 1. An incident; or

1 2. A critical incident.

2 (2) An incident shall be any occurrence that impacts the health, safety, welfare, or
3 lifestyle choice of a participant and includes:

4 (a) A minor injury;

5 (b) A medication error without a serious outcome; or

6 (c) A behavior or situation which is not a critical incident.

7 (3) A critical incident shall be an alleged, suspected, or actual occurrence of an inci-
8 dent that:

9 (a) Can reasonably be expected to result in harm to a participant; and

10 (b) Shall include:

11 1. Abuse, neglect, or exploitation;

12 2. A serious medication error;

13 3. Death;

14 4. A homicidal or suicidal ideation;

15 5. A missing person; or

16 6. Other action or event that the provider determines may result in harm to the partic-
17 ipant.

18 (4)(a) If an incident occurs, the ABI provider shall:

19 1. Report the incident by making an entry into the MWMA portal that includes details
20 regarding the incident; and

21 2. Be immediately assessed for potential abuse, neglect, or exploitation.

22 (b) If an assessment of an incident indicates that the potential for abuse, neglect, or
23 exploitation exists:

1 1. The individual who discovered or witnessed the incident shall immediately act to
2 ensure the health, safety, or welfare of the at-risk participant;

3 2. The incident shall immediately be considered a critical incident;

4 3. The critical incident procedures established in subsection (5) of this section shall
5 be followed; and

6 4. The ABI provider shall report the incident to the participant's case manager and
7 participant's guardian, if the participant has a guardian, within twenty-four (24) hours of
8 discovery of the incident.

9 (5)(a) If a critical incident occurs, the individual who witnessed the critical incident or
10 discovered the critical incident shall immediately act to ensure the health, safety, and
11 welfare of the at-risk participant.

12 (b) If the critical incident is:

13 1. One (1) that requires reporting of abuse, neglect, or exploitation, the critical inci-
14 dent shall be immediately reported via the MWMA portal by the individual who wit-
15 nessed or discovered the critical incident; or

16 2. Not one (1) which requires reporting of abuse, neglect, or exploitation, the critical
17 incident shall be reported via the MWMA portal by the individual who witnessed or dis-
18 covered the critical incident within eight (8) hours of discovery.

19 (c) The ABI provider shall:

20 1. Conduct an immediate investigation and involve the participant's case manager in
21 the investigation; and

22 2. Prepare a report of the investigation which shall be recorded in the MWMA portal
23 and shall include:

1 a. Identifying information of the participant involved in the critical incident and the
2 person reporting the critical incident;

3 b. Details of the critical incident; and

4 c. Relevant participant information including:

5 (i) Axis I diagnosis or diagnoses;

6 (ii) Axis II diagnosis or diagnoses;

7 (iii) Axis III diagnosis or diagnoses;

8 (iv) A listing of recent medical concerns;

9 (v) An analysis of causal factors; and

10 (vi) Recommendations for preventing future occurrences.

11 (6) If a critical incident is not one which requires reporting of abuse, neglect, or ex-
12 ploitation, the critical incident shall be reported via the MWMA portal within eight (8)
13 hours of discovery.

14 (7)(a) Following a death of a participant receiving ABI services from an ABI provider,
15 the ABI provider shall enter mortality data documentation into the MWMA portal within
16 fourteen (14) days of the death.

17 (b) Mortality data documentation shall include:

18 1. The participant's person-centered service plan at the time of death;

19 2. Any current assessment forms regarding the participant;

20 3. The participant's medication administration records from all service sites for the
21 past three (3) months along with a copy of each prescription;

22 4. Progress note regarding the participant from all service elements for the past
23 thirty (30) days;

1 5. The results of the participant's most recent physical exam;

2 6. All incident reports, if any exist, regarding the participant for the past six (6)
3 months;

4 7. Any medication error report, if any exists, related to the participant for the past six
5 (6) months;

6 8. The most recent psychological evaluation of the participant;

7 9. A full life history of the participant including any update from the last version of the
8 life history;

9 10. Names and contact information for all staff members who provided direct care to
10 the participant during the last thirty (30) days of the participant's life;

11 11. Emergency medical services notes regarding the participant if available;

12 12. The police report if available;

13 13. A copy of:

14 a. The participant's advance directive, medical order for scope of treatment, living
15 will, or health care directive if applicable;

16 b. Any functional assessment of behavior or positive behavior support plan regarding
17 the participant that has been in place over any part of the past twelve (12) months; and

18 c. The cardiopulmonary resuscitation and first aid card for any ABI provider's staff
19 member who was present at the time of the incident which resulted in the participant's
20 death;

21 14. A record of all medical appointments or emergency room visits by the participant
22 within the past twelve (12) months; and

1 15. A record of any crisis training for any staff member present at the time of the in-
2 cident which resulted in the participant's death.

3 (8)(a) An ABI provider shall report a medication error to the MWMA portal.

4 (b) An ABI provider shall document all medication error details on a medication error
5 log retained on file at the ABI provider site[documented on an Incident Report form.

6 ~~(2) There shall be three (3) classes of incidents as follows:~~

7 ~~(a) A Class I incident which shall:~~

8 ~~1. Be minor in nature and not create a serious consequence;~~

9 ~~2. Not require an investigation by the provider agency;~~

10 ~~3. Be reported to the case manager or support broker within twenty four (24) hours;~~

11 ~~4. Be reported to the guardian as directed by the guardian; and~~

12 ~~5. Be retained on file at the provider and case management or support brokerage~~
13 ~~agency;~~

14 ~~(b) A Class II incident which shall:~~

15 ~~1.a. Be serious in nature; or~~

16 ~~b. Include a medication error;~~

17 ~~2. Require an investigation which shall be initiated by the provider agency within~~
18 ~~twenty four (24) hours of discovery and shall involve the case manager or support bro-~~
19 ~~ker; and~~

20 ~~3. Be reported to the following by the provider agency:~~

21 ~~a. The case manager or support broker within twenty four (24) hours of discovery;~~

22 ~~b. The guardian within twenty four (24) hours of discovery; and~~

23 ~~c. BISB within twenty four (24) hours of discovery followed by a complete written re-~~

1 port of the incident investigation and follow-up within ten (10) calendar days of discov-
2 ery; and

3 ~~(c) A Class III incident which shall:~~

4 ~~1.a. Be grave in nature;~~

5 ~~b. Involve suspected abuse, neglect or exploitation;~~

6 ~~c. Involve a medication error which requires a medical intervention or hospitalization;~~

7 ~~d. Be an admission to an acute or psychiatric hospital;~~

8 ~~e. Involve the use of a chemical or physical restraint; or~~

9 ~~f. Be a death;~~

10 ~~2. Be Immediately investigated by the provider agency, and the investigation shall in-~~
11 ~~volve the case manager or support broker; and~~

12 ~~3. Be reported by the provider agency to:~~

13 ~~a. The case manager or support broker within eight (8) hours of discovery;~~

14 ~~b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or ex-~~
15 ~~ploitation in accordance with KRS Chapter 209;~~

16 ~~c. The guardian within eight (8) hours of discovery; and~~

17 ~~d. BISB, within eight (8) hours of discovery, followed by a complete written report of~~
18 ~~the incident investigation and follow-up within seven (7) calendar days of discovery. If~~
19 ~~an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday,~~
20 ~~notification to BISB shall occur on the following business day.~~

21 ~~(3) The following documentation with a complete written report shall be submitted for~~
22 ~~a death:~~

23 ~~(a) The plan of care in effect at the time of death;~~

1 ~~(b) The list of prescribed medications, including PRN medications, in effect at the~~
2 ~~time of death;~~

3 ~~(c) The crisis plan in effect at the time of death;~~

4 ~~(d) Medication administration review (MAR) forms for the current and previous~~
5 ~~month;~~

6 ~~(e) Staff notes from the current and previous month including details of physician and~~
7 ~~emergency room visits;~~

8 ~~(f) Any additional information requested by the department;~~

9 ~~(g) A coroner's report; and~~

10 ~~(h) If performed, an autopsy report].~~

11 Section 9.[7.] ABI Waiting List. (1) An individual of age eighteen (18) years or older
12 applying for an ABI waiver service shall be placed on a statewide waiting list which shall
13 be maintained by the department.

14 (2) In order to be placed on the ABI waiting list, an individual or individual's repre-
15 sentative shall:

16 (a) Apply for 1915(c) home and community based waiver services via the MWMA
17 portal;

18 (b) Complete and upload into the MWMA portal a MAP – 115 Application Intake –
19 Participant Authorization; and

20 (c) Upload to the MWMA portal [submit to the department a completed MAP-26,
21 Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver
22 Services Program, and] a completed MAP-10, Waiver Services – Physician's Recom-
23 mendation that has been signed by a physician.

1 (3) The order of placement on the ABI waiting list shall be determined by the:

2 (a) Chronological date of complete application information regarding the individual
3 being entered into the MWMA portal; ~~[receipt of the completed MAP-10, Waiver Ser-~~
4 ~~vices—Physician's Recommendation,]~~ and

5 (b) [by] Category of need.

6 (4) The ABI waiting list categories of need shall be emergency or nonemergency.

7 (5) To be placed in the emergency category of need, an individual shall be deter-
8 mined by the emergency review committee to meet the emergency category criteria es-
9 tablished in subsection (8) of this section.

10 (6) The emergency review committee shall:

11 (a) Be comprised of three (3) individuals from the department:

12 1. Who shall each have professional or personal experience with brain injury or cog-
13 nitive disabilities; and

14 2. None of whom shall be supervised by the branch manager of the department's
15 acquired brain injury branch; and

16 (b) Meet during the fourth (4th) week of each month to review and consider applica-
17 tions for the acquired brain injury waiver program to determine if applicants meet the
18 emergency category of need criteria established in subsection (8) of this subsection.

19 (7) An individual's application via the MWMA portal shall be completed ~~[A completed~~
20 ~~MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI)~~
21 ~~Waiver Services Program, and a completed MAP-10, Waiver Services—Physician's~~
22 ~~Recommendation for an ABI waiting list applicant shall be submitted to the department]~~
23 no later than three (3) business days prior to the fourth (4th) week of each month in or-

der to be considered by the emergency review committee during that month's emergency review committee meeting.

(8) An applicant shall meet the emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) An applicant who does not meet the emergency category of need criteria established in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.

(10) In determining chronological status of an applicant, the original date of the individual's complete application information being entered into the MWMA portal [receipt of the MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, and the MAP-10, Waiver Services Physician's Recommendation,] shall:

(a) Be maintained; and

(b) Not change if the [an] individual is moved from one (1) category of need to another.

(11) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(13) ~~[If multiple applications are received on the same date, a lottery shall be held to~~

1 ~~determine placement on the waiting list within each category of need.~~

2 ~~(14)]~~ A written notification of placement on the waiting list shall be mailed to the indi-
3 vidual or his or her legal representative and case management provider if identified.

4 ~~(14)]~~~~(15)]~~ Maintenance of the ABI waiting list shall occur as follows:

5 (a) The department shall, at a minimum, annually update the waiting list during the
6 birth month of an individual;

7 (b) If an individual is removed from the ABI waiting list, written notification shall be
8 mailed by the department to the individual and his or her legal representative and also
9 the ABI case manager; and

10 (c) The requested data shall be received by the department within thirty (30) days
11 from the date on the written notice required by subsection ~~(13)]~~~~(14)]~~ of this section.

12 ~~(15)]~~~~(16)]~~ Reassignment of an applicant's category of need shall be completed based
13 on the updated information and validation process.

14 ~~(16)]~~~~(17)]~~ An individual or legal representative may submit a request for considera-
15 tion of movement from one category of need to another at any time that an individual's
16 status changes.

17 ~~(17)]~~~~(18)]~~ An individual shall be removed from the ABI waiting list if:

18 (a) After a documented attempt, the department is unable to locate the individual or
19 his or her legal representative;

20 (b) The individual is deceased;

21 (c) The individual or individual's legal representative refuses the offer of ABI place-
22 ment for services and does not request to be maintained on the waiting list; ~~[or]~~

23 (d) An ABI placement for services offer is refused by the individual or legal repre-

1 tentative; or

2 (e) The individual [and he or she] does not access services[,] without demonstration
3 of good cause[,] ~~complete the Acquired Brain Injury Waiver Services Program Applica-~~
4 ~~tion form, MAP-26,~~] within sixty-(60) days of the placement allocation date.

5 1. The individual or individual's legal representative shall have the burden of provid-
6 ing documentation of good cause including:

7 a. A signed statement by the individual or the legal representative;

8 b. Copies of letters to providers; and

9 c. Copies of letters from providers.

10 2. Upon receipt of documentation of good cause, the department shall grant one (1)
11 sixty (60) day extension in writing.

12 ~~(18)~~[(19)] If an individual is removed from the ABI waiting list, written notification shall
13 be mailed by the department to the individual or individual's legal representative and the
14 ABI case manager.

15 ~~(19)~~[(20)] The removal of an individual from the ABI waiting list shall not prevent the
16 submittal of a new application at a later date.

17 ~~(20)~~[(21)] Potential funding allocated for services for an individual shall be based up-
18 on:

19 (a) The individual's category of need; and

20 (b) The individual's chronological date of placement on the waiting list.

21 Section 10. Participant ~~[8. Consumer]~~ Directed Services ~~[Option]~~. (1) Covered ser-
22 vices and supports provided to a participant receiving PDS ~~[an ABI recipient participat-~~
23 ~~ing in CDO]~~ shall include:

1 (a) Home and community support services;

2 (b) Community day support services;

3 (c) Goods or services; or

4 (d) Financial management.

5 (2) A home and community support service shall:

6 (a) Be available only as a participant-~~[under the consumer]~~ directed service~~[option]~~;

7 (b) Be provided in the participant's ~~[consumer's]~~ home or in the community;

8 (c) Be based upon therapeutic goals;

9 (d) Not be diversional in nature;

10 (e) Not be provided to an individual if the same or similar service is being provided to
11 the individual via non-PDS ~~[CDO]~~ ABI services; and

12 (f) 1. Be respite for the primary caregiver; or

13 2. Be supports and assistance related to chosen outcomes to facilitate independence
14 and promote integration into the community for an individual residing in his or her own
15 home or the home of a family member and may include:

16 a. Routine household tasks and maintenance;

17 b. Activities of daily living;

18 c. Personal hygiene;

19 d. Shopping;

20 e. Money management;

21 f. Medication management;

22 g. Socialization;

23 h. Relationship building;

- i. Meal planning;
- j. Meal preparation;
- k. Grocery shopping; or
- l. Participation in community activities.

(3) A community day support service shall:

(a) Be available only as a participant-directed service ~~[under the consumer-directed option];~~

(b) Be provided in a community setting;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Be tailored to the participant's ~~[consumer's]~~ specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant ~~[consumer]~~ for:

1. Work;

2. Community activities;

3. Socialization;

4. Leisure; or

5. Retirement activities; and

(f) Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS ~~[CDO]~~ ABI services.

(4) Goods or services shall:

(a) Be individualized;

(b) Be utilized to:

1 1. Reduce the need for personal care; or

2 2. Enhance independence within the participant's ~~consumer's~~ home or community;

3 (c) Not include experimental goods or services; and

4 (d) Not include chemical or physical restraints.

5 (5) To be covered, a PDS ~~[CDO-service]~~ shall be specified in a participant's person-
6 centered service ~~consumer's~~ plan ~~[of care]~~.

7 (6) Reimbursement for a PDS ~~[CDO-service]~~ shall not exceed the department's al-
8 lowed reimbursement for the same or a similar service provided in a non-PDS ~~[CDO]~~
9 ABI setting.

10 (7) A participant ~~consumer~~, including a married participant ~~consumer~~, shall choose
11 providers and the choice of PDS ~~[CDO]~~ provider shall be documented in his or her per-
12 son-centered service plan ~~[of care]~~.

13 (8)(a) A participant ~~consumer~~ may designate a representative to act on the parti-
14 pant's ~~consumer's~~ behalf.

15 (b) The PDS ~~[CDO]~~ representative shall:

16 1.~~[(a)]~~ Be twenty-one (21) years of age or older;

17 2.~~[(b)]~~ Not be monetarily compensated for acting as the PDS ~~[CDO]~~ representative or
18 providing a PDS ~~[CDO-service]~~; and

19 3.~~[(c)]~~ Be appointed by the participant ~~consumer~~ on a MAP-2000 form.

20 (9) A participant ~~consumer~~ may voluntarily terminate PD ~~[CDO]~~ services by complet-
21 ing a MAP-2000 and submitting it to the support broker.

22 (10) The department shall immediately terminate a participant ~~consumer~~ from CDO
23 services if:

1 (a) Imminent danger to the participant's ~~[consumer's]~~ health, safety, or welfare exists;

2 (b) The recipient's person-centered service plan ~~[of care]~~ indicates he or she requires
3 more hours of service than the program can provide, thus jeopardizing the recipient's
4 safety or welfare due to being left alone without a caregiver present; or

5 (c) The recipient, caregiver, family member, or guardian threatens or intimidates a
6 support broker or other PDS ~~[CDO]~~ staff.

7 (11) The department may terminate a participant ~~[consumer]~~ from PDS ~~[CDO ser-~~
8 ~~vices]~~ if it determines that the participant's PDS ~~[consumer's CDO]~~ provider has not ad-
9 hered to the person-centered service plan ~~[of care]~~.

10 (12) Prior to a participant's ~~[consumer's]~~ termination from PDS ~~[CDO services]~~, the
11 support broker shall:

12 (a) Notify the assessment or reassessment service provider of potential termination;

13 (b) Assist the participant ~~[consumer]~~ in developing a resolution and prevention plan;

14 (c) Allow at least thirty (30), but no more than ninety (90), days for the participant
15 ~~[consumer]~~ to resolve the issue, develop and implement a prevention plan, or designate
16 a PDS ~~[CDO]~~ representative;

17 (d) Complete and submit to the department a MAP-2000 form terminating the partici-
18 pant ~~[consumer]~~ from PDS ~~[CDO services]~~ if the participant ~~[consumer]~~ fails to meet the
19 requirements in paragraph (c) of this subsection; and

20 (e) Assist the participant ~~[consumer]~~ in transitioning back to traditional ABI services.

21 (13) Upon an involuntary termination of PDS ~~[CDO services]~~, the department shall:

22 (a) Notify a participant ~~[consumer]~~ in writing of its decision to terminate the partici-
23 pant's PDS ~~[consumer's CDO]~~ participation; and

(b) Inform the participant ~~[consumer]~~ of the right to appeal the department's decision in accordance with Section 10 of this administrative regulation.

(14) A PDS ~~[GDO]~~ provider:

(a) Shall be selected by the participant ~~[consumer]~~;

(b) Shall submit a completed Kentucky Participant-[Consumer] Directed Services ~~[Option]~~ Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the participant, participant's ~~[consumer, consumer]~~ representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the participant ~~[consumer]~~;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS ~~[GDO-services]~~;

(i) Shall submit to a check of the Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A participant ~~[consumer]~~ may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days; and

2. If a participant ~~[consumer]~~ does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant ~~[consumer]~~ shall cease em-

ployment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the:

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and

2. Caregiver Misconduct Registry maintained in accordance with 922 KAR 5:120 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant ~~[consumer]~~;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant ~~[consumer]~~.

(15) A PDS provider may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subsection (14) of this section.

(16) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

~~(17)~~~~(16)~~(a) 1. The department shall establish a budget for a participant ~~[consumer]~~ based on the individual's historical costs minus five (5) percent to cover costs associated with administering the participant- ~~[consumer]~~ directed services~~[option]~~.

2. If no historical cost exists for the participant ~~[consumer]~~, the participant's ~~[consumer's]~~ budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year person-centered service plan ~~[of care]~~ but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a participant's ~~[consumer's]~~ budget based on the participant's ~~[consumer's]~~ needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A participant's ~~[consumer's]~~ budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The participant's ~~[consumer's]~~ support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and
2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;
2. The cost effectiveness of the proposed services;
3. Protection of the participant's ~~[consumer's]~~ health, safety, and welfare; and
4. If a significant change has occurred in the recipient's:
 - a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
 - b. Natural support system; or

1 c. Environmental living arrangement resulting in the recipient's relocation.

2 (f) A participant's ~~[consumer's]~~ budget shall not exceed the average per capita cost
3 of services provided to individuals with a brain injury in a nursing facility.

4 ~~(18)[(17)]~~ Unless approved by the department pursuant to subsection (16)(b) through
5 (e) of this section, if a PDS ~~[CDO service]~~ is expanded to a point in which expansion
6 necessitates a budget allowance increase, the entire service shall only be covered via a
7 traditional (non-PDS ~~[CDO]~~) waiver service provider.

8 ~~(19)[(18)]~~ A support broker shall:

9 (a) Provide needed assistance to a participant ~~[consumer]~~ with any aspect of PDS
10 ~~[CDO]~~ or blended services;

11 (b) Be available to a participant ~~[consumer]~~ by phone or in person:

12 1. Twenty-four (24) hours per day, seven (7) days per week; and

13 2. To assist the participant ~~[consumer]~~ in obtaining community resources as needed;

14 (c) Comply with applicable federal and state laws and requirements;

15 (d) Continually monitor a participant's ~~[consumer's]~~ health, safety, and welfare; and

16 (e) Complete or revise a person-centered service plan in accordance with Section 4
17 of this administrative regulation ~~[of care using the Person-Centered Planning: Guiding~~
18 ~~Principles]~~.

19 ~~(20)[(19)]~~ For a PDS ~~[CDO]~~ participant, a support broker may conduct an assess-
20 ment or reassessment.

21 ~~(21)[(20)]~~ Financial management shall:

22 (a) Include managing, directing, or dispersing a participant's ~~[consumer's]~~ funds iden-
23 tified in the participant's ~~[consumer's]~~ approved PDS ~~[CDO]~~ budget;

1 (b) Include payroll processing associated with the individual hired by a participant
2 ~~[consumer]~~ or the participant's ~~[consumer's]~~ representative;

3 (c) Include:

4 1. Withholding local, state, and federal taxes; and

5 2. Making payments to appropriate tax authorities on behalf of a participant ~~[con-~~
6 ~~sumer]~~;

7 (d) Be performed by an entity that:

8 1. Is enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

9 2. Is currently compliant with 907 KAR 1:671;

10 3. Has at least two (2) years of experience working with individuals with an acquired
11 brain injury; and

12 (e) Include preparation of fiscal accounting and expenditure reports for:

13 1. A participant ~~[consumer]~~ or participant's ~~[consumer's]~~ representative; and

14 2. The department.

15 Section 11.[9.] Electronic Signature Usage. ~~[(4)]~~ The creation, transmission, storage,
16 or other use of electronic signatures and documents shall comply with the requirements
17 established in KRS 369.101 to 369.120.

18 ~~[(2) An ABI provider which chooses to use electronic signatures shall:~~

19 ~~(a) Develop and implement a written security policy which shall:~~

20 ~~1. Be adhered to by each of the provider's employees, officers, agents, and contrac-~~
21 ~~tors;~~

22 ~~2. Identify each electronic signature for which an individual has access; and~~

23 ~~3. Ensure that each electronic signature is created, transmitted, and stored in a se-~~

1 cure fashion;

2 ~~(b) Develop a consent form which shall:~~

3 ~~1. Be completed and executed by each individual using an electronic signature;~~

4 ~~2. Attest to the signature's authenticity; and~~

5 ~~3. Include a statement indicating that the individual has been notified of his or her re-~~
6 ~~sponsibility in allowing the use of the electronic signature; and~~

7 ~~(c) Provide the department, immediately upon request, with:~~

8 ~~1. A copy of the provider's electronic signature policy;~~

9 ~~2. The signed consent form; and~~

10 ~~3. The original filed signature.]~~

11 Section ~~12.~~~~[40.]~~ Appeal Rights. (1) An appeal of a department decision regarding a
12 participant ~~[recipient]~~ or applicant based upon an application of this administrative regu-
13 lation shall be in accordance with 907 KAR 1:563.

14 (2) An appeal of a department decision regarding Medicaid eligibility of an individual
15 based upon an application of this administrative regulation shall be in accordance with
16 907 KAR 1:560.

17 (3) An appeal of a department decision regarding a provider based upon an applica-
18 tion of this administrative regulation shall be in accordance with 907 KAR 1:671.

19 Section ~~13.~~~~[44.]~~ Incorporation by Reference. (1) The following material is incorpo-
20 rated by reference:

21 ~~(a) ["MAP 109, Prior Authorization for Waiver Services", July 2008 edition];~~

22 ~~(b) "MAP 24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL~~
23 ~~Program", August 2010 edition;~~

(c) ~~"MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008 edition;~~

(d) ~~"MAP-95, Request for Equipment Form", May 2010 edition;~~

(e) ~~"MAP-10, Waiver Services – Physician's Recommendation", June 2015 [August 2010 edition];~~

(b) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(c) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(d) "MAP – 531 Conflict-Free Case Management Exemption", May 2015;

(e) ~~[(f)] "Incident Report", July 2008 edition;~~

(g) ~~"MAP-2000, Initiation/Termination of Participant-[Consumer] Directed Services [Option] (CDO)", June 2015 [July 2008 edition];~~

(f) ~~[(h)] "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015 [July 2008 edition];~~

(g) ~~[(i)] "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006 [edition];~~

(h) ~~[(j)] "MAP-351, Medicaid Waiver Assessment", July 2015 [2008 edition];~~

(i) ~~[(k)] "Mayo-Portland Adaptability Inventory-4", March 2003 [edition];~~

(j) ~~[(l)] "Person Centered Planning: Guiding Principles", March 2005 edition;~~

(m) ~~"MAP-4100a", September 2010 [edition]; and~~

(k) ~~[(n)] "Kentucky Participant-[Consumer] Directed Services [Option] Employee Provider Contract", June 2015 [May 4, 2007 edition].~~

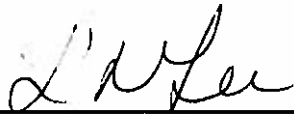
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law;

1 (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Ken-
2 tucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
3 (b) Online at the department's Web site at
4 <http://www.chfs.ky.gov/dms/incorporated.htm>.

907 KAR 3:090

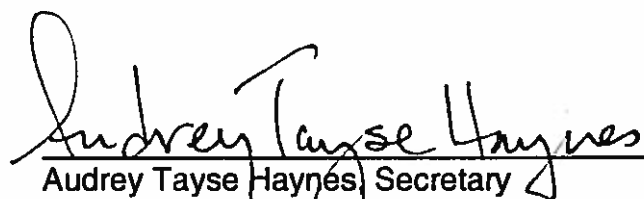
REVIEWED:

8-4-15
Date


Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

8/5/15
Date


Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 3:090

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing September 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:090
Contact Person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) waiver services. The ABI program enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. The amendments include establishing new federally-mandated case management requirements (that case management be free from conflict of interest); establishing federally-mandated requirements regarding the plan - the new term is person-centered service plan and the prior term was plan of care - that is used to identify the amount, duration, and types of services that a participant in the program receives (the plan is now called a person-centered service plan); requiring, as federally mandated, that an online portal (Medicaid Waiver Management Application or MWMA) be used to apply for admission to the program and to complete forms and documents associated with the program; adding new rights that must be guaranteed for individuals receiving services; requiring providers to check the Caregiver Misconduct Registry before hiring an individual and prohibits the hiring of anyone listed on the registry; narrowing the types of incidents to be reported from three (3) classes to two (2) and revising the incident reporting process by requiring incidents to be documented online in the new MWMA portal; and revising the application process by requiring it to be done via the new MWMA portal.

(b) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service plan requirements, and requiring a new online portal (MWMA) to be used) are mandated by the Centers for Medicare and Medicaid Services (CMS) via a CMS rule published January 2015. Requiring providers to check the Caregiver Miscon-

duct Registry regarding potential staff and to not hire anyone listed on the registry is a safeguard to enhance participant safety and welfare. Reducing the classes of incidents is an effort to synchronize incident reporting requirements among DMS's 1915(c) home and community based waiver services programs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving ABI waiver program services (participants) as well as providers of these services. Currently, there are 179 individuals receiving services, 263 on the waiting list to receive services, and twenty-eight (28) providers enrolled in the program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to ensure they comply with the conflict free case management requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 907 KAR 3:090
Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Among the mandates in 42 C.F.R. 441.730(b) are that services to waiver participants are free from conflict of interest. In the context of the ABI program that means that the individual who provides case management to a given waiver participant provide actual ABI waiver services or work for an entity that provides actual ABI waiver services or entity that has a business interest in a provider of actual ABI waiver services.

42 C.F.R. 447.425 establishes the person-centered service plan requirements which are many but the underlying requirement is that the plan be customized to the individual's needs (based on input from the individual or representatives of the individual among other parties) and promote/enhance the individual's independence and choice in their services and activities as well as integration their community.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter, additional or different requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 907 KAR 3:090

Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services and the Department for Behavioral Health, Intellectual and Developmental Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will not increase costs in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments to this administrative regulation will not increase costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES**

907 KAR 3:090

Summary of Material Incorporated by Reference

(1) The Department for Medicaid Services (DMS) is adding the following to the material incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015 which is a one (1) page form used to individuals to designate someone to represent them in applying for services and doing so online via the new Medicaid Waiver Application Management (MWMA) portal;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015 which is a one (1) page form used to individuals to designate someone to represent them in developing a person-centered service plan;

(c) "MAP – 531 Conflict-Free Case Management Exemption", May 2015 which is a one (1) page form used by individuals to request an exemption from the requirement that case management be conflict free;

(2) DMS is deleting the following material from the incorporated by reference material as the information previously captured on the material will be entered and maintained in the new Medicaid Waiver Management Application (MWMA) online portal or otherwise provided or documented or is otherwise no longer necessary:

(a) The "MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program", August 2010;

(b) The "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008;

(c) The "Incident Report", July 2008;

(d) The "MAP-95, Request for Equipment Form", May 2010;

(e) The "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008;

(f) The "Person Centered Planning: Guiding Principles", March 2005 edition.

(3) The following incorporated material is being revised:

(a) "MAP 10, Waiver Services Physician's Recommendation", June 2015 – which is a one (1) page form used to document a physician's recommendation for waiver program services for an individual – replaces the August 2010 and is revised to change the term "mental retardation" or "mentally retarded" to "intellectual disability";

(b) "MAP-2000, Initiation/Termination of Participant-Directed Services (PDS)", June 2015 – which is a two (2) page form used to initiate or end the receipt of participant-directed services - replaces the July 2008 edition due to changing the name of "consumer" and "CDO" to "participant" and "PDS";

(c) "Kentucky Participant Directed Services Employee Provider Contract", June 2015 – which is a two (2) page contract used to hire participant-directed service employees - replaces the May 4, 2007 edition and is revised to change the term "consumer" to "participant" and "CDO" to "PDS";

(d) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015 - which is a two (2) page form used to document individual's understanding of the option to receive waiver services and related provisions – replaces the July 2008 version and is revised to replace the term "mental retardation" with "intellectual disability" and "ICF/MR/DD" with "ICF IID";

(e) "MAP 351, Medicaid Waiver Assessment", July 2015 – which is a fifteen (15) page document used to assess the needs of an individual applying for waiver services to help determine if they qualify for services. The June 2015 version replaces the July 2008 version. Revisions include changing the term "mental retardation" to "intellectual disability", "consumer" to "participant", "consumer directed option" or "CDO" to "participant directed services" or "PDS", and removing references to the Supports for Community Living (SCL) waiver as the form is no longer used for that waiver.

The total number pages incorporated by reference for this administrative regulation is twenty-nine (29) pages.